HOUSE . . . . . No. 4373

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, November 8, 2007.

The committee on Telecommunications, Utilities and Energy, to whom was referred the petition of Salvatore F. DiMasi, Brian S. Dempsey and Daniel E. Bosley for legislation to establish the green communities act of 2007 through the development of a comprehensive energy policy for the Commonwealth (House, No. 3965), reports recommending that the accompanying bill (House, No. 4365), ought to pass.

For the committee,

BRIAN S. DEMPSEY.

House bill No. 4365, as changed by the committee on Bills in the Third Reading, and as amended and as passed to be engrossed by the House. November 15, 2007.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO GREEN COMMUNITIES.

"Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for clean and renewable energy in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience."

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 7 of the General Laws is hereby amended by inserting after section 9A the following section:-

Section 9B. Motor vehicles owned and operated by the commonwealth, as they are removed from service, shall only be replaced with vehicles that have above-average fuel efficiency for new vehicles within their size class as determined by the federal government. The provisions of this section shall not apply in cases where the purchase of an above-average fuel efficiency vehicle within their size class as determined by the federal government would result in an inability of the new vehicle to perform its intended duties.

SECTION 2. Said chapter 7 is hereby further amended by inserting after section 39C the following section:-

Section 39D. (a) The commissioner of the division of capital asset management and maintenance, shall require any state agency that initiates the construction of a new facility, or substantial renovation of an existing facility that includes the replacement of systems, components, and other building elements which affect energy or water consumption, and which is either owned or operated by the commonwealth, to design and construct such facility to minimize the life-cycle cost of the facility by utilizing energy efficiency, water conservation, or other renewable energy technologies pursuant to the following criteria:-

(i) state agencies shall conduct a life-cycle cost analysis of any such facility's proposed design that evaluates the short-term and long-term cost and technical feasibility of using a passive or active solar energy system, wind-powered energy system, geothermal or other renewable energy system to provide lighting, heat, water heating, air conditioning or electricity. State agencies shall utilize solar or wind-powered systems when the life-cycle cost analysis has determined that such systems are economically feasible;

(ii) each new educational facility, including any municipal educational facility financed through the school building assistance bureau, for which the projected demand for hot water exceeds 1,000 gallons per day, or which operates a heated swimming pool, shall be constructed, whenever economically and physically feasible, with a solar or other renewable energy system as the primary energy source for the domestic hot water system or swimming pool of the facility;

(iii) each such state agency shall attempt, in the design, construction, equipping and operation of such facilities, to coordinate these efforts with the department of clean energy in order to maximize reliance and benefits of renewable energy research and investment activities promoted by this act; and

(iv) each such state agency shall file with said department a report detailing its compliance with this section with respect to each such facility.

(b) Notwithstanding section 11C of chapter 25A, the division of capital asset management and maintenance may procure energy management services jointly with a state agency or building authority that is procuring energy or related services. Said section 11C shall apply to the extent determined feasible by the commissioner of the department of clean energy.

(c) For purposes of this section, the words "economically-feasible" shall mean providing a payback period of not more than 10 years, as determined by a life-cycle cost analysis. The division of capital asset management and maintenance shall establish, on or before July 1, 2008, a methodology for use by agencies in assessing life-cycle costs. The department of clean energy shall issue an annual report to the general court detailing the compliance record of all state agencies with the construction and renovation provisions in this section.

SECTION 3. Chapter 12 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out section 11E and inserting in place thereof the following section:-

Section 11E. (a) There shall be within the office of the attorney general, an office of ratepayer advocacy. The attorney general through the office of ratepayer advocacy is hereby authorized to intervene, appear and participate in administrative or judicial proceedings held in the commonwealth on behalf of any group of consumers in connection with any matter involving the rates, charges, prices, tariffs of an electric company, gas company, generator, transmission company, telephone company or telegraph company doing business in the commonwealth and subject to the jurisdiction of the department of public utilities or the department of telecommunications and cable.

(b) The office of ratepayer advocacy shall be under the direction of an assistant attorney general appointed pursuant to section 2. The assistant attorney general shall devote his full time and attention to the duties of the office.

SECTION 4. Section 7 of chapter 21A of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: - In the executive office shall be an office of the secretary, a department of environmental protection, a department of conservation and recreation, a department of agricultural resources, a department of fish and game, a department of public utilities, and a department of clean energy.

SECTION 5. Said chapter 21A is hereby further amended by adding the following 2 sections: -

Section 21. The secretary, in conjunction with the secretary of administration and finance, shall design and implement a competitive bidding process for the competitive procurement of electric generation on behalf of any agency, executive office, department, board, commission, bureau, division, or authority of the commonwealth procuring electricity from a local distribution company via basic service pursuant to subsection (e) of section 1B of chapter 164 as of July 1, 2008; provided further that, any such competitive bid received shall include payment options with rates that remain uniform for a minimum period of 1 year; and provided further, that in lieu of designing and implementing a competitive bidding process as required by this section, the secretary may become a member of 1 or more programs organized and administered by the Massachusetts Health and Educational Facilities Authority or its subsidiary organization for the purpose of such competitive group purchasing of electricity.

"Section 22 (a) There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Massachusetts Renewable Energy Trust Fund, hereinafter in this section referred to as the fund. The secretary of energy and environmental affairs shall hold the fund in an account separate from other funds or accounts. There shall be credited to the fund any revenue from appropriations or other monies authorized by the general court and specifically designated to be credited to the fund, and any gifts, grants, private contributions, investment income earned on the fund's assets and all other sources and all amounts collected pursuant to section 20 of chapter 25 and any income derived from the investment of amounts credited to the fund. All amounts credited to the fund shall be held in trust and used solely for activities and expenditures consistent with the public purpose of the fund as set forth in subsection (c) and in no case shall any money remaining in the fund at the end of a fiscal year revert to the General Fund.

(b) The secretary, in consultation with the advisory board established pursuant to subsection (g), may draw upon monies in the fund for the public purpose of generating the maximum economic and environmental benefits over time to the ratepayers of the commonwealth from renewable energy through a series of initiatives which exploit the advantages of renewable energy in a more competitive energy marketplace by promoting the increased availability, use, and affordability of renewable energy, by making operational improvements to existing renewable energy projects and facilities which, in the determination of the secretary, have achieved results which would indicate that future investment in said facilities would yield results in the development of renewable energy more significant if said funds were made available for the creation of new renewable energy facilities, and by fostering the formation, growth, expansion, and retention within the commonwealth of preeminent clusters of renewable energy and

related enterprises, institutions, and projects, which serve the citizens of the commonwealth.

(c) The public purposes to be advanced through the secretary's actions shall include, but not be limited to, the following: (i) developing, permitting, and constructing renewable energy projects, or procuring the development, permitting or construction of renewable energy projects, thereby increasing the use and affordability of renewable energy resources in the commonwealth; (ii) protecting the environment and the health of the citizens of the commonwealth through the prevention, mitigation, and alleviation of the adverse pollution effects associated with certain electricity generation facilities; (iii) ensuring delivery to all consumers of the commonwealth of as many benefits as possible created as a result of increased fuel and supply diversity; (iv) creating additional employment opportunities in the commonwealth through the development of renewable energy technologies; (v) stimulating increased public and private sector investment in, and competitive advantage for, renewable energy and related enterprises, institutions, and projects in the commonwealth; (vi) stimulating entrepreneurial activities in these and related enterprises, institutions, and projects; (vii) providing non-financial assistance for the development, permitting, and construction of renewable energy projects; (viii) entering into bulk purchasing agreements for energy, renewable energy credits, or renewable energy equipment; (ix) providing economic assistance for the growth and development of a renewable energy sector; and (x) undertaking any other action consistent with provisions of this chapter.

(d) In furtherance of these and other public purposes and interests, the secretary may, in consultation with the advisory board established pursuant to subsection (g), expend monies from the fund to make grants, contracts, loans, equity investments, energy production credits, bill credits, or rebates to customers, to provide financial or debt service obligation assistance, or to take any other actions, in such forms, under such terms and conditions and pursuant to such selection procedures as the secretary deems appropriate and otherwise in a manner consistent with good business practices; provided, however, that the secretary shall generally employ a preference for competitive procurements; provided, further, that the secretary shall endeavor to leverage the full range of the resources, expertise, and participation of other state and federal agencies and instrumentalities in the design and implementation of programs under this section; and provided, further, that the secretary has determined that such actions are calculated to advance the public purpose and public interests set

forth in this section, including, but not limited to, the following: (i) the growth of the renewable energy-provider industry; (ii) the use of renewable energy by electricity customers in the commonwealth; (iii) public education and training regarding renewable energy; (iv) product and market development; (v) pilot and demonstration projects and other activities designed to increase the use and affordability of renewable energy resources by and for consumers in the commonwealth; (vi) the provision of financing in support of the development and application of related technologies at all levels, including, but not limited to, basic and applied research and commercialization activities; (vii) the design and making of improvements to existing renewable energy projects and facilities as defined herein which were in operation as of December 31, 1997; and (viii) matters related to the conservation of scarce energy resources.

The secretary shall, in consultation with the advisory board established pursuant to subsection (g), adopt a detailed plan for the application of the fund in support of the design, implementation, evaluation, and assessment of a renewable energy program for the commonwealth, subject to periodic revision by the secretary, that ensures that the fund shall be employed to provide financial and non-financial resources to overcome barriers facing renewable energy enterprises, institutions, and projects in a prudent manner consistent with the public purposes and interests set forth in this section. Said plan, to the extent practicable, shall consist of at least four components: (i) “product and market development” to establish a foundation for growth and expansion of the commonwealth's renewable energy enterprises, institutions, and projects, including pilot and demonstration projects, production incentives, and other activities designed to increase the use and affordability of renewable energy in the commonwealth; (ii) “training and public information” to allow for the development and dissemination of complete, objective, and timely information, analysis, and policy recommendations related to the advancement of the public purposes and interests of the renewable energy fund; (iii) “investment” to support the growth and expansion of renewable energy enterprises, institutions, and projects; and (iv) “research and development” within the commonwealth related to renewable energy matters. Said plan shall specify the expenditure of such monies from the fund to each of these component activities; provided, however, that monies so expended shall be used to develop such renewable energy projects within the commonwealth. In developing said plan, the secretary is hereby authorized and directed to consult with and utilize the services of the executive office for such technical assistance as the secretary

deems necessary or appropriate to the effective discharge of his responsibilities and duties relative to the fund.

(e) Subject to the approval of the secretary, investment activity of monies from the fund may consist of the following: (i) an equity fund, to provide risk capital to renewable energy enterprises, institutions, and projects; (ii) a debt fund, to provide loans to renewable energy enterprises, institutions, projects, intermediaries, and end-users; and (iii) a market growth assistance fund, to be used to attract private capital to the equity and debt funds. To implement these investment activities, the secretary is hereby authorized to retain, through a competitive bid process, a public or private sector investment fund manager or managers, who shall have prior knowledge and experience in fund management and possess related skills in renewable energy and related technologies development, to direct the investment activity described herein and to seek other fund co-sponsors to contribute public and private capital from the commonwealth and other states; provided, however, that such capital is appropriately segregated. Said manager or managers, subject to the approval of the secretary, shall be authorized to retain necessary services and consultants to carry out the purposes of the fund. Said manager or managers shall develop a business plan to guide investment decisions, which shall be approved by the secretary prior to any expenditures from the fund and which shall be consistent with the provisions of the plan for the fund as adopted by the secretary.

(f) For the purposes of expenditures from the fund, renewable energy technologies eligible for assistance shall include the following: solar photovoltaic and solar thermal electric energy; wind energy; ocean thermal, wave, or tidal energy; geothermal; fuel cells; landfill gas; naturally flowing water and hydroelectric; low emission, advanced biomass power conversion technologies, such as gasification using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel. Such funds may also be used for investment by distribution companies to overcome barriers to renewable energy development, if consistent with the provisions of this section. The following technologies or fuels shall not be considered renewable energy supplies: coal, oil, natural gas, and nuclear power.

(g) The secretary is hereby authorized to transfer amounts from the fund to, and enter into funding or subsidy agreements with, the Massachusetts Development Finance Agency established pursuant to section 2 of chapter 23G, hereinafter referred to as the agency; provided, however, that the secretary shall not transfer more than

50 per cent of the revenue deposited into the fund pursuant to section 20 of chapter 25 to the agency in any one fiscal year.

Notwithstanding chapter 23G or any other general or special law to the contrary, amounts transferred to the agency shall be applied to make loans to users as defined in said chapter 23G for the purpose of financing or refinancing costs of renewable energy projects approved by the secretary, or to insure or provide loan guarantees for loans, or to provide reserves for or otherwise secure bonds of the agency issued for such purpose, or to provide for or otherwise subsidize debt service costs on such loans or other forms of financial assistance or such bonds, as agreed in an operating or other agreement between the agency and the secretary. Any such amounts transferred to the agency shall be held and applied by the agency separate and apart from all other monies of the agency.

(h) In addition to the powers granted pursuant to chapters 23G and 40D of the General Laws, the agency is hereby authorized to borrow money and issue and secure its bonds for the purpose of financing renewable energy generating facilities, renewable energy research and development facilities and renewable energy manufacturing facilities, as provided in, and subject to, the provisions of this section; provided further that the provisions of said chapters 23G and 40D shall apply to bonds issued under this section, except that the provisions of subsection (b) of section 8 of said chapter 23G and section 12 of said chapter 40D shall not apply to bonds issued pursuant to this section or to the renewable energy generating facilities, renewable energy research and development facilities or renewable energy manufacturing facilities financed thereby; and provided further, that renewable energy generating facilities, renewable energy research and development facilities and renewable energy manufacturing facilities financed by the agency pursuant to this section shall constitute a project within the meaning of section 1 of said chapter 23G and section 1 of said chapter 40D, but shall not be considered facilities to be used in a commercial enterprise.

(i) Prior to financing any renewable energy generating facilities, renewable energy research and development facilities and renewable energy manufacturing facilities in accordance with this section, the agency shall find and determine that: (i) the renewable energy generating facility, renewable energy research and development facility or renewable energy manufacturing facility has been approved by the secretary upon a finding by the secretary that the financing of said facility is expected to promote the use of renewable energy resources in the commonwealth and help to

achieve the public purposes of this chapter; (ii) the recipient is a responsible party; (iii) the agency's bonds, if any, and the financing documents therefore contain reasonable provisions and comply with the applicable provisions of this chapter and chapters 23G and 40D; and (iv) payments to be made under the applicable financing documents, including any moneys made available from the fund, are adequate to pay the current expenses of the agency in connection with the renewable energy project and to make payments on the bonds, if any, issued by the agency therefore.

(j) In addition to the provisions of said chapters 23G and 40D pertaining to the security of bonds issued by the agency, bonds issued by the agency pursuant to this section may be secured by funds received, or to be received, by the agency as provided in this section. Bonds issued pursuant to this section may be issued under, and secured by, a trust agreement or other financing document with such terms and conditions as the agency may determine in accordance with this section and the applicable provisions of said chapters 23G and 40D.

(k) Bonds issued by the agency pursuant to this section shall not be deemed to be a debt or a pledge of the faith and credit of the commonwealth or any political subdivision thereof and shall be payable solely from revenue received from the fund and from any other monies and rights pledged for their payment. All bonds issued by the agency pursuant to this section shall recite that neither the commonwealth nor any political subdivision thereof shall be obligated to pay the same and neither the full faith and credit nor the taxing power of the commonwealth or any political subdivision thereof is pledged to such payment.

(l) Nothing in this section shall be construed to limit or otherwise diminish the power of the agency to finance the costs of projects authorized pursuant to said chapters 23G and 40D within a certified economic development project upon compliance with the provisions of said chapters 23G and 40D.

(m) The use by the secretary of monies to implement the provisions of this section shall be deemed to be an essential governmental function.

(n) The governor shall appoint an advisory committee to assist the secretary in matters related to the fund and in the implementation of the provisions of this section. Said advisory committee shall include not more than 15 individuals with an interest in matters related to the general purpose and activities of the fund and the

knowledge and experience in at least one of the following areas: electricity distribution, generation, supply, or power marketing; the concerns of commercial and industrial ratepayers; residential ratepayers, including low-income ratepayers; economics, financial or investment consulting expertise relative to the fund; regional environmental concerns; academic issues related to power generation, distribution or the development or commercialization of renewable energy sources; institutions of higher education; municipal or regional aggregation matters; and renewable energy issues. The secretary shall consult with said advisory committee in discharging his obligations under this section.

(o) The books and records of the executive office relative to expenditures and investments of monies from the fund shall be subject to a biennial audit by the auditor of the commonwealth.

(p) Notwithstanding any general or special law to the contrary, including without limitation any laws related to the procurement of electricity, and subject to this paragraph, the secretary shall, upon the written request of the governor, transfer monies in the fund, in an amount not exceeding $17 million in the aggregate, to the commonwealth for deposit in the General Fund. As a condition precedent to any such transfer, the commonwealth, acting by and through the executive office for administration and finance, shall enter into an agreement with the executive office under which the commonwealth, at the direction of the executive office, shall enter into 1 or more contracts with owners of facilities that generate electricity using renewable energy technologies, or with wholesale power marketers or other market intermediaries selling such electricity, for the purchase by the commonwealth, for its own use or for the use of any municipal electric department, public instrumentality or other governmental or nongovernmental entity in the commonwealth, of electricity produced by renewable energy technologies. The secretary shall determine the particular type or types of technologies which shall be the subject of any such contract based on such criteria as it shall deem advisable, including without limitation retail consumer choices of such renewable energy technologies. The aggregate dollar amount of the green power premium associated with electricity purchases to be made by the commonwealth for its own use under such contracts shall have a present value, determined according to such discount rate as shall be mutually agreeable to the corporation and the commonwealth, of such amount as shall be transferred pursuant to the first sentence of this paragraph. The green power premium shall be determined by subtracting from the total amount of the purchase price the undifferentiated commodity price for electricity

under then-current commonwealth contracts. No payments shall be required from the commonwealth pursuant to any such contract prior to the fiscal year ending June 30, 2005, and the maximum payment in any 1 fiscal year under all such contracts shall not exceed $5 million. The commonwealth shall be indemnified under such contracts by said owners or power marketers on such terms as the corporation shall deem commercially reasonable. The amounts collected under section 20 of chapter 25 are impressed with a trust for the benefit of the fund and, to facilitate the purchase by the executive office of electricity produced by renewable energy technologies or the purchase of certificates produced pursuant to the renewable energy portfolio standard regulations of the department representing the generation attributes of electrical energy produced by renewable energy technologies, and in consideration of the sale of such electricity or certificates, the commonwealth covenants with the sellers of such electricity or certificates that the amounts collected under said section 20 of chapter 25 will not be diverted from the fund and that the rates of the mandatory charges pursuant to said section 20 of chapter 25 will not be reduced during the term, which shall not exceed 20 years, of any contract entered into by the executive office for the purchase of such electricity or certificates below a level which will enable the executive office to fulfill the terms of such contracts. In furtherance of the public purposes of the fund, income derived from the investment of amounts collected under section 20 of chapter 25 shall be expended by the executive office as provided in subsection (a) and, in the discretion of the executive office, in furtherance of the public purposes of the executive office and for such costs of departments and agencies of the commonwealth that support or are otherwise consistent with the purposes of the fund.

(q) The department shall, pursuant to chapter 30A, within 180 days of the effective date of this section promulgate rules and regulations and establish guidelines for the administration and enforcement of this section, including, but not limited to, establishing applicant criteria, application forms and procedures, and renewable energy product requirements.

(r) The secretary shall annually, no later than July 1, file a report with the house and senate committees on ways and means and the joint committee on telecommunications, utilities and energy. Said report shall include: (i) a list of fund recipients; (ii) the associated grant and loan amounts; (iii) the amounts of non-ratepayer funding leveraged, if any, as a result of the grants and loans, including in-kind and other non-cash contributions; (iv) the purposes of the grants and loans; (v) an annual statement of cash inflows and

outflows detailing the sources and uses of funds; (vii) a detailed breakdown of all investments made by the fund pursuant to subsection (e); and (viii) a detailed breakdown of the purposes and amounts of administrative costs, including salaries, charged to the fund",

SECTION 6. Chapter 25 of the General Laws is hereby amended by inserting after section 5D the following section:-

Section 5E. Upon written complaint by the attorney general of the commonwealth requesting any independent or department audit of the rate components of any company subject to the jurisdiction of said department, the department shall commence a proceeding within 30 days of receipt of said complaint to determine whether to order such requested audit. If cause for an audit is shown through this proceeding, the department shall order said audit in a reasonable amount of time. The results of any audit so ordered shall be filed promptly with the department of public utilities and the audits shall be paid for by the company that is the subject of the audit.

The department may, from time to time, audit all companies subject to the jurisdiction of said department, including, but not limited to, review of the following documents: (i) all financial statements, the balance sheet, the income statement, the statement of cash flows, the statement of retained earnings, the notes to the financial statements, the information in the annual return to the department of public utilities; (ii) all reconciling mechanisms related to rates, prices or charges, merger, acquisition or consolidation related costs and savings three years following the merger, acquisition or consolidation; and, (iii) service quality measure statistics and the service quality performance at least every 3 years or whenever service quality penalties equal to or exceed 50 percent of the maximum.

SECTION 7. Said chapter 25 is hereby further amended by inserting after section 18 the following section:-

Section 18A. The commission is hereby authorized to make an assessment against each steam distribution company under the jurisdictional control of the department of public utilities. Each steam distribution company shall annually report by March 31 its intrastate operating revenues for the previous calendar year to said department. Said assessments shall be made at a rate not exceeding 0.2 per cent of such intrastate operating revenues, as shall be determined and certified annually by the commission as sufficient to reimburse the commonwealth for funds appropriated by the general court for the operation and general administration of the department and for the cost of fringe benefits as established by the commissioner of administration pursuant to section 5D of chapter 29, including group life and health insurance, retirement benefits, paid vacations, holidays and sick leave.

Each company shall pay the amount assessed against it within 30 days after the date of the notice of assessment from the department. Such assessments collected by the department shall be credited to the General Fund. Any funds unexpended in any fiscal year for the purposes for which such assessments were made shall be credited against the assessment to be made in the following fiscal year and the assessment in the following fiscal year shall be reduced by any such unexpended amount.

SECTION 8. Said chapter 25 is hereby further amended by striking out sections 19 and 20, as appearing in the 2006 Official Edition, and inserting in place thereof the following 6 sections:-

Section 19. (a) The department shall require a mandatory charge of 2.5 mills per kilowatt-hour for all consumers of the commonwealth, except those served by a municipal lighting plant, to fund energy efficiency programs including, but not limited to, demand side management programs. The programs shall be administered by the electric distribution companies and by municipal aggregators with energy plans certified by the department pursuant to subsection (b) of chapter 164. In addition to the aforementioned mandatory charge, such programs shall also be funded by amounts generated by the distribution companies and municipal aggregators pursuant to the Forward Capacity Market program administered by ISO New England and by substantially all amounts generated by all cap and trade pollution control programs, including, but not limited to, the carbon dioxide allowance trading mechanism established pursuant to the Regional Greenhouse Gas Initiative Memorandum of Understanding and the NOx Allowance Trading Program, and other funding as approved by the department after consideration of (i) the effect of any rate increases on residential and commercial consumers, (ii) the availability of other funds, private or public, utility administered or otherwise, that may be available for energy efficiency or demand resources, and (iii) whether past programs have lowered the cost of electricity to residential and commercial consumers. In authorizing such programs the department shall ensure that they are delivered in a cost-effective manner capturing all available efficiency opportunities and utilizing competitive procurement processes to the fullest extent practicable.

(b) The department is authorized to approve and fund gas energy efficiency programs proposed by gas distribution companies including, but not limited to, demand side management programs. Energy efficiency activities eligible for funding under this section shall include geothermal heating and cooling projects provided that the number of wells for any such project exceeds 375 and that the geothermal heating and cooling systems are owned and utilized by not-for-profit institutions in the commonwealth. Funding may be supplemented by funds authorized by Section 22 of this chapter. The programs shall be administered by the gas distribution companies. In authorizing such programs the department shall ensure that they are delivered in a cost-effective manner capturing all available efficiency opportunities and utilizing competitive procurement processes to the fullest extent practicable.

(c) Electric and gas energy efficiency program funds shall be allocated to customer classes, including the low-income residential sub-class, in proportion to their contributions to those funds; provided, however, that at least 10 per cent of the amount expended for electric energy efficiency programs and at least 20 per cent of the amount expended for gas energy efficiency programs shall be spent on comprehensive low-income residential demand-side management and education programs; and provided further that for a period of 3 years subsequent to the expiration of each electric or gas company efficiency plan or agreement in place as of January 1, 2008, the

amount and percentage allocated to the low-income residential sub-class for the electric or gas company shall not be reduced from that provided under law, guidelines and agreements in force as of January 1, 2008. The low-income residential demand-side management and education programs shall be implemented through the low-income weatherization and fuel assistance program network and shall be coordinated with all electric and gas distribution companies in the commonwealth with the objective of standardizing implementation. Such programs shall be screened only through cost-effectiveness testing which compares the value of program benefits to society to program costs to ensure that programs are designed to obtain energy savings and system benefits whose value is greater than the costs of the programs.

Section 20. The department shall require a mandatory charge per kilowatt-hour for all electricity consumers of the commonwealth, except those consumers served by a municipal lighting plant which does not supply generation service outside its own service territory or does not open its service territory to competition at the retail level, to support the development and promotion of clean and renewable energy projects. Said charge shall be in the amount of ½ of 1 mill per kilowatt-hour. All revenues generated by said mandatory charge shall be deposited into the Massachusetts Renewable Energy Trust Fund, established pursuant to section 22 of chapter 21A.

Section 21. (a) In order to mitigate capacity and energy costs for all customers, the department shall ensure that, subject to subsection (c) of section 19 the commonwealth's electric and natural gas resource needs shall first be met through all available energy efficiency and demand reduction resources that are cost effective and all such resources that are less expensive than supply. The cost of supply shall be determined by the department with consideration of the average cost of generation to all customer classes over the previous 24 months.

(b)(1) On or before March 30, 2008, and every 3 years thereafter, the electric distribution utilities and municipal aggregators with certified efficiency plans shall jointly prepare an electric Efficiency Investment Plan and the natural gas distribution utilities shall jointly prepare a natural gas plan. Each of the plans shall provide for the acquisition of all available energy efficiency and demand resources that are cost effective and all such resources that are less expensive than supply and shall be prepared in coordination with the energy efficiency advisory council, established by section 22 of this chapter.

(2) The plan shall include: (a) an assessment of the estimated lifetime cost, reliability, and magnitude of all available energy efficiency and demand reduction resources that are cost effective and all such resources that are less expensive than supply, (b) the amount of demand resources, including efficiency, conservation, demand response and load management, that are proposed to be acquired under the plan and the basis for this determination, (c) the estimated energy cost savings the acquisition of such resources will provide to electricity and natural gas consumers, including but not limited to reductions in capacity and energy costs and increases in rate stability and affordability for low-income customers, (d) programs, which may include, but not be limited to: (i) efficiency and load management programs; (ii) demand response programs; (iii) research, development and commercialization of products or processes which are more energy-efficient than those generally available; (iv) development of markets for such products and processes, including recommendations for new appliance and product efficiency standards; (v) support for energy use assessment, real-time monitoring systems, engineering studies and services related to new construction or major building renovation, including integration of such

assessments, systems, studies and services with building energy codes programs and processes, or those regarding the development of high performance or sustainable buildings that exceed code; (vi) the design, manufacture, commercialization and purchase of energy-efficient appliances and heating, air conditioning and lighting devices; (vii) program planning and evaluation; (viii) programs providing commercial, industrial and institutional customers with greater flexibility and control over demand side investments funded by the programs at their facilities; and (ix) public education regarding energy efficiency and demand management; provided, however, that not more than 1 per cent of the fund shall be expended for items (iii) and (iv) collectively, without authorization from the advisory council, (e) a proposed mechanism which provides performance incentives to the companies based on their success in meeting or exceeding the goals in the plan, (f) the budget that is needed to support the programs, (g) a fully reconciling funding mechanism which may include, but not be limited to, the charge authorized by section 19, and (h) the estimated amount of reduction in peak load that will be reduced from each option and any estimated economic benefits for such projects including job retention, job growth, or economic development.

(3) The plan shall also include data showing the percentage of all monies collected that will be used for direct consumer benefit, such as incentives and technical assistance to carry out the provisions of the plan. With the approval of the advisory council, the plan may also include a mechanism to provide priority to projects that have substantial benefits in reducing peak load or have economic development, job creation or job retention benefits.

(4) (a) The electric and natural gas plans will be for a 3 year period and shall be prepared every 3 years by the natural gas and electric utilities and municipal aggregators with certified efficiency plans.

(b) Programs included in the plan shall be screened through cost-effectiveness testing which compares the value of program benefits to the program costs to ensure that programs are designed to obtain energy savings and system benefits whose value is greater than the costs of the programs. Program cost-effectiveness shall be reviewed periodically by the department as well as by the council. If a program is determined to fail the cost-effectiveness test as part of the review process, it shall either be modified to meet the test or shall be terminated.

(c) The plan shall be submitted for approval and comment by the energy efficiency advisory council. The companies shall provide any additional information requested by the council that is relevant to the consideration of the plan. The council shall review the plan and any additional information and submit its approval or comments to the natural gas and electric distribution companies and municipal aggregators, not later than three months after submission of the plan. The natural gas and electric distribution companies and municipal aggregators may make any changes or revisions to reflect the input of the council.

(c)(1) The natural gas and electric distribution companies and municipal aggregators shall submit the plan, together with the council's approval or comments and a statement of any unresolved issues to the department on or before June 30, 2008. The department shall consider the plan and shall provide an opportunity for interested parties to be heard in an adjudicatory proceeding.

(2) Not later than 90 days after submission of the plan, the department shall issue a decision on the plan which ensures that the electric and natural gas distribution utilities have identified and will capture all energy efficiency and demand reduction resources that are cost effective and all such resources

that are less expensive than supply and shall approve, or modify and approve, the plan accordingly. In the case of municipal aggregators, the department shall approve a fully reconciling funding mechanism for the approved plan that requires coordination between the distribution company and municipal aggregator to ensure program costs are collected, allocated and distributed in a cost effective, fair and equitable manner.

Section 22. (a) The department shall appoint and convene an energy efficiency advisory council which shall consist of not more than 12 members, including at least 1 person representing: (i) residential consumers, (ii) the low-income weatherization and fuel assistance program network, (iii) environmental, (iv) business including large C&I end-users, (v) manufacturing, (vi) energy efficiency experts, (vii) labor, (viii) the department of environmental protection, (ix) the attorney general (x) the executive office of housing and economic development, and (xi) the department of clean energy. Interested parties shall apply to the department for designation as members. Members shall serve for terms of 5 years and may be reappointed. The commissioner of the department of clean energy will serve as chairperson of the council. The representative of energy efficiency experts may not have a contractual relationship with any electric or natural gas distribution company or electricity or natural gas provider. Each of the electric and natural gas distribution companies, a heating oil industry representative, and a representative of energy efficiency businesses, shall be non-voting, ex-officio members.

(b) The council, as part of the approval process by the department, shall seek to maximize net economic benefits through energy efficiency and load management resources and to achieve state energy, capacity, climate, and environmental goals through a sustained and integrated statewide energy efficiency effort. The council shall review and approve demand resource program plans and budgets, work with program administrators in preparing energy resource assessments, determine the economic, system reliability, climate and air quality benefits of efficiency and load management resources, conduct and recommend relevant research, and recommend long term efficiency and load management goals for the commonwealth to maximize economic savings and achieve environmental goals. Approval of efficiency and demand resource plans and budgets shall require a two-thirds majority vote. The council shall, as part of its review of plans, examine opportunities to offer joint programs providing similar efficiency measures that save more than one fuel resource or otherwise to coordinate programs targeted at saving more than one fuel resource. Any costs for joint programs shall be allocated equitably among the efficiency programs.

(c) The council may retain expert consultants provided such consultants may not have any contractual relationship with an electric or natural gas distribution company or electricity or natural gas provider. The council shall annually submit to the department a proposal regarding the level of funding required for the retention of expert consultants and reasonable administrative costs which proposal shall be approved by the department either as submitted or as modified by the department. The department shall allocate funds sufficient for these purposes from the natural gas and electric efficiency funding authorized pursuant to section 19; provided, however, that such allocation shall not exceed 1 per cent of such funding on an annual basis. On or before December 31, 2008, the advisory council shall undertake, using third party experts, a study which examines the energy efficiency and demand response programs in Massachusetts, including all public and private funding sources. Included in this study shall be an audit of all existing energy efficiency and demand response programs

to identify the costs and benefits associated with such programs. The consultants used under this section shall be experts in energy efficiency and shall be independent and not in receipt of disbursement of funds from any funding connected with energy efficiency or demand response programs, except as in the capacity as third party independent experts.

(d) The natural gas and electric distribution companies and municipal aggregators shall provide quarterly reports to the council on the implementation of the plan. The reports shall include a description of the each company's progress in implementing the plan, a summary of the savings secured to date and such other information as the council shall determine appropriate. The council shall provide an annual report to the joint committee on telecommunications, utilities and energy, and the department on the implementation of the plan which includes descriptions of the programs, expenditures, cost-effectiveness and savings and other benefits during the previous year.

Section 23. As used in sections 19, 21 and 22, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Direct consumer benefit", customer incentives and assistance provided directly to the consumer.

"Added costs to consumers", shall include any added costs associated with carrying out the program compared to those costs associated with carrying out the program during the previous 3 year plan period.

SECTION 9. Chapter 25A of the General Laws is hereby amended by striking sections 1 and 2, as so appearing, and inserting in place thereof the following 2 sections:-

Section 1. There shall be a department of clean energy which shall be under the supervision, direction and control of a commissioner of clean energy. The commissioner shall be appointed by the governor and shall be a person of skill and experience in the field of energy regulation or policy. The commissioner shall be the executive and administrative head of the department and shall be responsible for administering and enforcing the provisions of law relative to the department and to each administrative unit thereof. The commissioner shall serve at the pleasure of the governor, shall receive such salary as may be determined by law, and shall devote his full time to the duties of his office. In the case of an absence or vacancy in the office of the commissioner, or in the case of disability as determined by the governor, the governor may designate an acting commissioner to serve as commissioner until the vacancy is filled or the absence or disability ceases. The acting commissioner shall have all the powers and duties of the commissioner and shall have similar qualifications as the commissioner.

Section 2. (a) There shall be within the department of clean energy 3 divisions, a division of energy efficiency which shall work with the department of public utilities regarding the energy efficiency programs; a division of renewable and alternative energy development which shall oversee and coordinate activities that seek to maximize the installation of renewable energy generating resources that will provide benefits to ratepayers, advance the production and use of bio-fuels and other alternative fuels as the division may define by regulation, and administer the Massachusetts renewable portfolio standard, established in section 11F; and a division of green communities which shall serve as the principal point of contact for municipalities and other governmental bodies concerning all matters under the jurisdiction of the department of clean energy. Said divisions shall be headed by a director who shall be appointed by the commissioner and shall be a person of skill and experience in the field of

energy efficiency, renewable or alternative energy, and energy regulation or policy, respectively. The directors shall be the executive and administrative head of their respective division and shall be responsible for administering and enforcing the provisions of law relative to said division and to each administrative unit thereof. The director shall serve at the pleasure of the commissioner, shall receive such salary as may be determined by law, and shall devote his full time to the duties of his office. In the case of an absence or vacancy in the office of the director, or in the case of disability as determined by the commissioner, the commissioner may designate an acting director to serve as director until the vacancy is filled or the absence or disability ceases. The acting director shall have all the powers and duties of the director and shall have similar qualifications as the director. The directors shall be responsible for carrying out the work of their respective divisions under the supervision, direction, and control of the commissioner.

(b) The commissioner may from time to time, subject to appropriation, establish within the department such administrative units as may be necessary for the efficient and economical administration of the department, and when necessary for such purpose, may abolish any such administrative unit, or may merge any two or more of them, as the commissioner deems advisable. The commissioner shall prepare and keep current a statement of the organization of the department, of the assignment of its functions to its various administrative units, offices and employees, and of the places at which and the methods whereby the public may receive information or make requests. Such statement shall be known as the department's description of organization. A current copy of the description of organization shall be kept on file in the office of the secretary of state and in the office of the secretary of administration.

(c) Subject to appropriation, the commissioner may appoint such persons as he shall deem necessary to perform the functions of the department, provided that the provisions of chapter 31 and section 9A of chapter 30 shall not apply to any person holding any such appointment. Every person so appointed to any position in the department shall have experience and skill in the field of such position. So far as practicable in the judgment of the commissioner, appointments to such positions in the department shall be made by promoting or transferring employees of the commonwealth serving in positions which are classified under said chapter 31, and such appointments shall at all times reflect the professional needs of the administrative unit affected. If an employee serving in a position which is classified under said chapter 31 or in which an employee has tenure by reason of said section 9A of chapter 30 shall be appointed to a position within this office which is not subject to the provisions of said chapter 31, the employee shall upon termination of his service in such position be restored to the position which he held immediately prior to such appointment; provided, however, that his service in such position shall be determined by the civil service commission in accordance with the standards applied by said commission in administering said chapter 31. Such restoration shall be made without impairment of his civil service status or tenure under said section 9A of chapter 30 and without loss of seniority, retirement or other rights to which uninterrupted service in such prior position would have entitled him. During the period of such appointment, each person so appointed from a position in the classified civil service shall be eligible to take any competitive promotional examination for which he would otherwise have been eligible.

SECTION 10. Section 3 of said chapter 25A, as so appearing, is hereby amended by striking out, in line 11, the words "division of energy

resources” and inserting in place thereof the following words:- department of clean energy.

SECTION 11. Section 3 of said chapter 25A as so appearing is hereby amended by inserting after the definition of “Energy management services” the following definition —

“Energy savings”, a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of 1 or more energy conservation measures or projects, provided that any payback analysis to evaluate the energy savings of a geothermal energy system to provide heating, cooling or water heating over its expected lifespan shall include gas and electric consumption savings, maintenance savings and shall use an average escalation rate based on the most recent information compiled by the US Department of Energy’s Energy Information Administration for gas and electric rates.

SECTION 12. Section 5 of said chapter 25A, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The commissioner of clean energy shall file an annual report with the joint committee on telecommunications, utilities and energy and the house and senate committees on ways and means: (a) listing the number of employees of the department of clean energy, the salaries and titles of each employee, the source of funding for the salaries of said employees and the projected date when federal funds for such positions are expected to terminate; (b) listing and describing grant programs of the department funded by the federal government, including the amount of funding by grant; (c) listing and describing other programs of the department, including the amount and source of funding by program; and (d) describing the energy audit, energy conservation and alternative energy bond programs by categories of projects prospective grantees under each category, if known, and amounts to be spent by category and grantee.

SECTION 13. Section 6 of said chapter 25A, as so appearing, is hereby amended by striking out, in line 1, the words "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 14. Section 7 of said chapter 25A, as so appearing, is hereby amended by striking out, in lines 1, 21 and 22 and in line 29, the words "division of energy resources" and inserting in place thereof, in each instance, the following words:- department of clean energy.

SECTION 15. Section 8 of said chapter 25A, as so appearing, is hereby amended by striking out, in line 12, the words "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 16. Section 9 of said chapter 25A, as so appearing, is hereby amended by striking out, in line 10 the words "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 17. Section 10 of said chapter 25A is hereby repealed.

SECTION 18. Section 11E of said chapter 25A, as so appearing, is hereby amended by striking out, in line 1, the words "division of energy

resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 19. Said section 11F of said chapter 25A, as so appearing is hereby further amended by striking out subsections (a) and (b) and inserting in place thereof the following 5 subsections:-

(a) The department of clean energy, shall establish a renewable energy portfolio standard for all retail electricity suppliers selling electricity to end-use customers in the commonwealth. By December 31, 1999, the department shall determine the actual percentage of kilowatt-hours sales to end-use customers in the commonwealth which is derived from existing renewable energy generating sources. Every retail supplier shall provide a minimum percentage of kilowatt-hours sales to end-use customers in the commonwealth from new renewable energy generating sources, according to the following schedule: (i) an additional 1 per cent of sales by December 31, 2003, or one calendar year from the final day of the first month in which the average cost of any renewable technology is found to be within 10 per cent of the overall average spot-market price per kilowatt-hour for electricity in the commonwealth, whichever is sooner; (ii) an additional one-half of 1 per cent of sales each year thereafter until December 31, 2009; and (iii) an additional 1 per cent of sales every year thereafter. For the purpose of this subsection, a new renewable energy generating source is one that begins commercial operation after December 31, 1997, or that represents an increase in generating capacity after December 31, 1997, at an existing facility. Commencing on January 1, 2009, such minimum percentage requirement shall be known as the “Class I” renewable energy generating source requirement.

(b) For the purposes of this section, a renewable energy generating source is one which generates electricity using any of the following: (i) solar photovoltaic or solar thermal electric energy; (ii) wind energy; (iii) ocean thermal, wave, or tidal energy; (iv) fuel cells utilizing renewable fuels; (v) landfill gas; (vi) waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; (vii) naturally flowing water and hydroelectric; (viii) low-emission advanced biomass power conversion technologies using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel; and (ix) geothermal energy; provided, however, that after December 31, 1998, the calculation of a percentage of kilowatt-hours sales to end-use customers in the commonwealth from new renewable generating sources shall exclude clauses (vi) and (vii) herein. The department may also consider any previously operational biomass facility retrofitted with advanced conversion technologies as a renewable energy generating source.

(c) Commencing on January 1, 2008, such new renewable energy generating sources meeting the requirements of this paragraph shall be known as Class I renewable energy generating sources. For the purposes of this section, a new renewable energy generating source is one that begins commercial operation after December 31, 1997, or the net increase from incremental new generating capacity after December 31, 1997 at an existing facility, where the facility generates electricity using any of the following: (i) solar photovoltaic or solar thermal electric energy; (ii) wind energy; (iii) ocean thermal, wave, or tidal energy; (iv) fuel cells utilizing renewable fuels; (v) landfill gas; (vi) incremental energy resulting from increased capacity and efficiency at hydroelectric facilities licensed by FERC after 1986, or at hydroelectric facilities that receive FERC approval to construct improvements necessary to provide such incremental energy, so long as such

increased capacity and efficiency does not involve pumped storage of water; provided that only such improvements to a hydroelectric facility made after January 1, 1998, and only up to 5 megawatts per facility of incremental new energy attributable to such improvements, shall be considered a new renewable energy generating source; and provided further that the facility meets all applicable current state and federal fish passage requirements; (vii) low-emission, advanced biomass power conversion technologies, such as gasification using fuels such as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel; or (viii) geothermal energy.

(d) Commencing on January 1, 2009, every retail electric supplier providing service under contracts executed or extended on or after January 1, 2009, shall also provide a minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth from Class II renewable energy generating sources. For the purposes of this section, a Class II renewable energy generating source is one that began commercial operation before December 31, 1997 and generates electricity using any of the following: (i) solar photovoltaic or solar thermal electric energy; (ii) wind energy; (iii) ocean thermal, wave, or tidal energy; (iv) fuel cells utilizing renewable fuels; (v) landfill gas; (vi) waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; (vii) a run-of-the river hydroelectric facility that does not utilize a dam constructed subsequent to December 31, 1997, does not entail any new impoundment or diversion of water subsequent to December 31, 1997, and where such facility (a) has a nameplate capacity of 5 megawatts or less, (b) meets all applicable current state and federal fish passage requirements, and (c) has not been recommended for decommissioning or removal by any federal, state or local agency responsible for environmental protection or public safety with regulatory jurisdiction over rivers, dams or hydroelectric facilities; (viii) low-emission biomass power conversion technologies, such as gasification using fuels such as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel; or (ix) geothermal energy. After conducting administrative proceedings, the department may add technologies or technology categories to any above list; provided, however, that the following technologies shall not be considered renewable energy supplies: coal, oil, natural gas, and nuclear power.

(e) On or before June 30, 2008, the department of clean energy shall determine the actual percentage of kilowatt-hour sales to end-use customers in the commonwealth which was derived from Class II generating sources in 1998. On or before January 1, 2009, every retail supplier shall annually provide to end-use customers in the commonwealth, generation attributes from Class II energy facilities in the amount equal to the percent of the kilowatt hour sales from Class II energy generating sources in 1998, and shall provide at least that percentage of Class II generation attributes each year thereafter. Such minimum percentage requirement for kilowatt-hour sales from Class II energy generating sources may be adjusted by the department as necessary to promote the continued operation of existing energy generating resources that meet the requirements of subsection (d), and may be met through kilowatt-hour sales to end-use customers from any energy generating source meeting the requirements of said subsection (d). For purposes of calculating a retail supplier's minimum percentage of kilowatt-hour sales of Class II renewable energy generating sources, retail supplier's annual, kilowatt-hours sales to end-use customers shall be net of kilowatt-hours of energy that such retail supplier is obligated to purchase in that year pursuant to an agreement that was entered into prior to October 1, 2007. The department shall establish and maintain regulations allowing for a

retail supplier to discharge its obligations under this section by making an alternative compliance payment in an amount established by thedepartment. The department shall establish and maintain regulations outlining procedures by which each retail supplier shall annually submit for the department's review a filing illustrating the retail supplier's compliance with the requirements of this section.

SECTION 20. Said chapter 25A is hereby further amended by inserting after section 11F the following section:-

Section 11F1/2(a). The department of clean energy shall establish an alternative energy portfolio standard for all retail electricity suppliers selling electricity to end-use customers in the commonwealth. Beginning January 1, 2009, every retail supplier shall provide a percentage of kilowatt-hour sales, as determined by the department, to end-use customers in the commonwealth from alternative energy generating sources, and the department shall annually thereafter determine the minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth which shall be derived from alternative energy generating sources. For the purposes of this section, an alternative energy generating source is one which generates electricity using any of the following: (i) coal gasification; (ii) combined heat and power; or (iii) any other alternative energy technology approved by the department pursuant to an administrative proceeding conducted pursuant to chapter 30A; provided, however, that the following technologies shall not be considered alternative energy supplies: coal, except when used in coal gasification, oil, nuclear power, and natural gas, except when used in coal gasification. The department shall set emission performance standards including for CO2 for all technologies included in this section consistent with the state's environmental goals.

(b) The department shall promulgate regulations allowing for a retail supplier to discharge its obligations under this section by making an alternative compliance payment in an amount established by the department. Such regulations shall outline procedures by which each retail supplier shall annually submit for the department's review a filing illustrating the retail supplier's compliance with the requirements of this section.

SECTION 21. Section 11G of said chapter 25A is hereby repealed.

SECTION 22. Section 11H of said chapter 25A, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 1, the words "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 23. Said chapter 25A is hereby further amended by inserting after section 11L the following section:-

Section 11M. For the purposes of this section, the following words shall have the following meanings:-

"Capacity resource", an external resource as defined by ISO-NE's Manual M-20, Section 3.8.7. External Resources.

"Generator", the person that owns, directly or indirectly, the renewable energy generating source that is located in a control area adjacent to the ISO-NE Control Area, but does not include any person under contract with the Generator to purchase the renewable energy or renewable energy credits associated with such renewable energy.

"Person", any individual, corporation, limited liability company, general or limited partnership, trust, association or other entity.

A renewable energy generating source as described in section 11F that is physically located in or relocated to a control area adjacent to the ISO New England ("ISO-NE") control area may qualify as an eligible renewable energy generating source under section 11F, provided however, that the renewable energy electricity generated by such renewable energy generating source was delivered into and used by consumers within the ISO-NE control area.

The delivery of renewable energy into the ISO-NE as described in the second paragraph shall not qualify under the renewable portfolio standard, notwithstanding such delivery into the ISO-NE control area, unless the generator of such renewable energy: (i) initiates the import transaction pursuant to a bilateral sales contract with a purchaser of the renewable energy located in the ISO-NE control area by properly completing a North American Electric Reliability Council tag from the generator in the adjacent control area to either a node or zone in the ISO-NE control area; (ii) commits its renewable energy generating source to the ISO-NE control area as a capacity resource for a period of not less than 5 years beginning on the date the renewable energy generating source receives qualification from the; and (iii) complies with all ISO-NE rules and regulations required to schedule and deliver all of the renewable energy generating source's energy and capacity into the ISO-NE control area.

During any period in which the generator, or any person under contract with the generator, is delivering renewable energy from the renewable energy generating source into the ISO-NE control area, and notwithstanding compliance with the third paragraph, the renewable energy generated by the renewable energy generating source that is eligible for the renewable portfolio standard shall be limited to the lesser of the following: (i) the renewable energy actually generated by the renewable energy generating source; (ii) the renewable electricity actually scheduled and delivered into the ISO-NE control area from the renewable energy generating source in compliance with subsection (b); or (iii) the renewable energy generating source's capacity rating adjusted for its outages.

The renewable portfolio standard credit applicable to the eligible renewable energy as determined pursuant to the fourth paragraph shall be reduced by any exports of energy from the ISO-NE control area made by the person seeking renewable portfolio credit for such renewable energy, or any affiliate of such person, or any other person under contract with such person to export energy from the ISO-NE control area and deliver such energy directly or indirectly to such person.

The department through duly adopted regulations may require such other requirements as it deems appropriate consistent with this section.

SECTION 24. Section 12 of said chapter 25A, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 15, the word "energy" and inserting in place thereof the following words:- telecommunication, utilities and energy.

SECTION 25. Section 13 of said chapter 25A, as so appearing, is hereby amended by striking out, in lines 10 to 11, the words "Division of Energy Resources Credit Trust Fund" and inserting in place thereof the following words:- Department of Clean Energy Credit Trust Fund.

SECTION 26. Said section 13 of said chapter 25A, as so appearing, is hereby further amended by striking out, in line 16, the words "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 27. Said section 13 of said chapter 25A, as so appearing, is hereby further amended by striking out, in line 16 and 17, the word "division" and inserting in place thereof the following word:- department.

SECTION 28. Said chapter 25A is hereby further amended by adding the following 5 sections:-

Section 14. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Building authority", the University of Massachusetts Building Authority, the Southeastern Massachusetts University Building Authority, the University of Lowell Building Authority or any other building authority which may be established for similar purposes.

"Eligible", able to meet all requirements for offerors or bidders set forth in this section and section 44D of chapter 149 and not debarred from bidding under section 44C of said chapter 149 or any other applicable law, and who shall certify that he or she is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.

"Governmental body", a city, town, district, regional school district, county, or agency, board, commission, authority, department or instrumentality of a city, town, district, regional school district or county, and all other public agencies which are not a state agency or building authority.

"Minor informalities", minor deviations, insignificant mistakes, and matters of form rather than substance of the proposal or contract document which can be waived or corrected without prejudice to other offerors, potential offerors, or the public agency.

"Person", any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals.

"Public agency", a department, agency, board, commission, authority, or other instrumentality of the commonwealth or political subdivision of the commonwealth or 2 or more subdivisions thereof.

"Responsible", demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work called for by a particular contract, based upon a determination of competent workmanship and financial soundness in accordance with this section and section 44D of chapter 149.

"Responsive offeror", a person who has submitted a proposal which conforms in all respects to the requests for proposals.

"State agency", a state agency, board, bureau, department, division, section, or commission of the commonwealth.

(b) A public agency may, in the manner provided by this section, contract for the procurement of energy management services. Such contracts may include terms of 10 years or less. Contracts which include cogeneration projects shall have terms of 20 years or less. The public agency shall solicit competitive sealed proposals through a request for proposals. At least 1 week prior to soliciting proposals for a contract pursuant to this section, a public agency shall notify the secretary in writing, in such form and including such information as the secretary shall prescribe by regulation, of the agency's intent to solicit proposals. Such notification shall, at a minimum, include a complete copy of the agency's request for proposals. An acknowledgment of receipt, in such form and by including such information as the secretary shall prescribe by regulation, shall be issued to the public agency upon successful compliance with the requirements of this paragraph.

Requests for proposals for an energy management services contract to be entered into on behalf of a state agency or a building authority, shall be

developed jointly by the division of capital asset management and maintenance and the using agency. Such proposals shall only be solicited by the division of capital asset management and maintenance after the commissioner of said division has given his prior written approval, and no contract for energy management services shall be valid unless approved and signed by said commissioner. Said commissioner may delegate to state agencies and building authorities the authority to enter into such contracts with an estimated construction cost of less than $200,000. Such delegation shall be in writing from the commissioner to the regulating agency or building authority.

The request for proposals published by a public agency under this section shall include: (i) the time and date for receipt of proposals and the address of the office to which the proposals are to be delivered; (ii) a description of the services to be procured, including specific requirements and all evaluation criteria that will be utilized by the state agency or building authority; and (iii) proposed contract terms and conditions and an identification of such terms and conditions which shall be deemed mandatory and nonnegotiable. The request for proposals may incorporate documents by reference, provided that the request for proposals specifies where prospective offerors may obtain the documents. The public agency shall make copies of the request for proposals available to all persons on an equal basis. Public notice of the request for proposals shall conform to the procedures set forth in subsection (1) of section 44J of chapter 149. Proposals shall be opened publicly, in the presence of 2 or more witnesses, at the time specified in the request for proposals, and shall be available for public inspection.

The provisions of sections 44A and 44B and sections 44E to 44H, inclusive, of chapter 149 shall not apply to contracts procured pursuant to this section. The provisions of section 44D of said chapter 149 shall apply as appropriate to proposals submitted for contracts under this section, and every such proposal shall be accompanied by: (i) a copy of a certificate of eligibility issued by the commissioner of the division of capital asset management and maintenance; and (ii) an update statement. The offeror's qualifications shall be evaluated by the division of capital asset management and maintenance in a manner designated by the commissioner of said division. If the public agency determines that any offeror is not responsible or eligible, the public agency shall reject the offer and give written notice of such action to the division of capital asset management and maintenance.

State agencies and building authorities shall award contracts under this section to the lowest offeror demonstrably possessing the skill, ability, and integrity necessary to perform faithfully energy management services.

Payments under a contract for energy management services may be based in whole or in part on any cost savings attributable to a reduction in energy and water consumption due to the contractor's performance or revenues gained due to the contractor's services which are aimed at energy and water cost savings.

(c) The provisions of this subsection shall apply to a governmental body procuring contracts under this section.

Unless no other manner of description suffices, and the governmental body so determines in writing, setting forth the basis for the determination, all requirements shall be written in a manner which describes the requirements to be met without having the effect of exclusively requiring a proprietary supply or service or a procurement from a sole source.

Subject to a governmental body's authority to reject, in whole or in part, any and all proposals, as provided in this section, a governmental body shall unconditionally accept a proposal without alternation or correction,

except as provided in this paragraph. An offeror may correct, modify, or withdraw a proposal by written notice received in the office designated in the request for proposals prior to the time and date set for opening the proposals. After proposal opening, an offeror may not change any provisions of the proposal in a manner prejudicial to the interests of the governmental body or fair competition. The governmental body shall waive minor informalities or allow the offeror to correct them. If a mistake and the intended proposal are clearly evident on the face of the proposal document, the governmental body shall correct the mistake to reflect the intended correction and so notify the offeror in writing, and the offeror may not withdraw the proposal. An offeror may withdraw a proposal if a mistake is clearly evident on the face of the proposal but the intended correction is not similarly evident.

The governmental body shall evaluate each proposal and award each contract based solely on the criteria set forth in the request for proposals. Such criteria shall include, but not be limited to, all standards by which the governmental body will evaluate responsiveness, responsibility, qualifications of the offeror, technical merit and cost to the governmental body. The request for proposals shall specify the method for comparing proposals to determine the proposal offering the lowest overall cost to the governmental body, taking into consideration comprehensiveness of services, energy or water cost savings, costs to be paid by the governmental body and revenues to be paid to the governmental body. If the governmental body awards the contract to an offeror who did not submit the proposal offering the lowest overall cost, the governmental body shall explain the reason for the award in writing.

The evaluations shall specify revision, if needed, to each proposal which should be obtained by negotiation prior to awarding the contract to the offeror of the proposal. The governmental body may condition an award on successful negotiation of the revisions specified in the evaluation, and shall explain in writing the reasons for omitting any such revision from a plan incorporated by reference in the contract.

(d) The public agency may cancel a request for proposals, or may reject in whole or in part any and all proposals when the public agency determines that cancellation or rejection serves the best interests of the public agency.

The public agency shall state in writing the reason for a cancellation or rejection. The public agency shall promptly publish in the central register notice of the offeror awarded the contract. The public agency shall, within 30 days, file a copy thereof with the secretary.

The secretary, in consultations with the commissioner of the division of capital asset management and maintenance, shall promulgate regulations for the procurement of energy management services under this section, provided however, that the commissioner of the division of capital asset management and maintenance shall promulgate regulations for services to be procured for state agencies and building authorities; and provided, further, that regulations affecting the operations of housing authorities within the jurisdiction of the department of housing and community development shall be promulgated in consultation with the director of housing and community development. Such regulations may limit the scope of services procured and the duration of contracts, and shall include any requirements that the secretary or commissioner of the division of capital asset management and maintenance deems necessary to promote prudent management of such contracts at the appropriate facilities. Such regulations shall require the submission, at least annually, of such information as the secretary or commissioner of the division of capital asset management and maintenance

may deem necessary in order to monitor the costs and benefits of contracts for energy management services.

(e) The secretary shall enforce the requirements of this section and regulations promulgated hereunder as they relate to public agencies except for state agencies and building authorities and shall have all the necessary powers to require compliance therewith. The commissioner of the division of capital asset management and maintenance shall enforce all such regulations as they relate to state agencies and building authorities. Any order of the secretary under this subsection shall be effective and may be enforced according to its terms, and enforcement thereof shall not be suspended or stayed by the entry of an appeal. The superior court for Suffolk county shall have jurisdiction over appeals of orders of the secretary under this subsection, and shall also have jurisdiction upon application of said secretary to enforce all orders of said secretary under this subsection. The burden of proof shall be upon the appealing party to show that the order of said secretary is invalid. An aggrieved person shall not be required to seek an order from said secretary as a condition precedent to seeking any other remedy.

Section 15. (a) As used in this section, the following words shall have the following meanings:—

"Eligible", able to meet all requirements for offerors or bidders set forth in this section including, without limitation, being certified by the division of capital asset management and maintenance as eligible to provide energy management systems services and not debarred from bidding under section 44C of chapter 149 or any other applicable law.

"Energy conservation measures", measures involving modifications or maintenance and operating procedures of a building or facility and installations therein, which are designed to reduce energy consumption in such building or facility, or the installation or, modification of an installation in a building or facility which is primarily intended to reduce energy consumption.

"Energy conservation projects", projects to promote energy conservation, including but not limited to, energy conserving modification to windows and doors; caulking and weather-stripping; insulation, automatic energy control systems; hot water systems; equipment required to operate variable steam, hydraulic and ventilating systems; plant and distribution system modifications including replacement of burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; and cogeneration systems.

"Energy management services", a program of services, including energy audits, energy conservation measures, energy conservation projects, or a combination thereof, and building maintenance and financing services, primarily intended to reduce the cost of energy and water in operating 1 or more buildings, which may be paid for, in whole or in part, by cost savings attributable to a reduction in energy and water consumption which result from the services.

"Energy management systems", the design and installation of systems or maintenance programs to conserve energy use within a building, including, without limitation, performance-contracting energy saving projects; the installation or modification of new and existing equipment which will reduce energy and water consumption associated with heating, ventilation, and air conditioning system, lighting system, building envelope, domestic hot water system, and other energy and water using devices; and the work associated with monitoring and verifying project savings and the

study or design of the subject work, whether performed directly or managed through subcontractors.

"Energy savings", a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of 1 or more energy management services when compared with an established baseline of previous fuel, energy, operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed pursuant to the guaranteed energy savings contract.

"Guaranteed energy savings contract", a contract for the evaluation, recommendation or implementation of 1 or more energy management services in which payments are based, in whole or in part, on any energy savings attributable to the contract.

"Person", any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

"Public agency", a city, town or district, including a regional school district, or a combination of 2 or more such cities, towns or districts, including regional school districts, or a department, agency, board, commission, authority or other instrumentality of the commonwealth.

"Qualified provider", responsible and eligible person able to meet all requirements set forth in this section, and not debarred from bidding under section 44C of chapter 149 or any other applicable law and experienced in the design, implementation and installation of energy savings measures.

"Request for qualifications", a solicitation directed to qualified providers issued by a public agency to obtain energy management services pursuant to a guaranteed energy savings contract subject to this section. The request for qualifications shall include the following: (i) the name and address of the public agency; (ii) the name, address, title and phone number of a contact person; (iii) The date, time and place where qualifications must be received; (iv) a description of the services to be procured, including a facility profile with a detailed description of each building involved and accurate energy consumption data for the most recent 2 year period, stated objectives for the program, a list of building improvements to be considered or required and a statement as to whether the proposed improvements will generate sufficient energy savings to fund the full cost of the program; (v) The evaluation criteria for assessing the qualifications; (vi) a statement that the public agency may cancel the request for qualifications or may reject in whole or in part any and all energy savings measures when the public agency determines that cancellation or rejection serves the best interests of the public; (vii) any other stipulations and clarifications the public agency may require, which shall be clearly identified in the request for qualifications.

"Responsible", demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work called for by a particular contract, based upon a determination of competent workmanship and financial soundness in accordance with section 44D of chapter 149.

(b) A public agency may choose to use this section in the procurement of energy management services as an alternative to the procedures set out in section 11C. Nothing in this section shall preclude any such agency from choosing to proceed thereafter under said section 11C. A public agency may enter into a guaranteed energy savings contract in order to achieve energy savings at facilities in accordance with this section. All energy savings measures shall comply with current local, state and federal construction, and environmental codes and regulations. Prior to entering into a guaranteed energy savings contract, a public agency shall issue a request for qualifications. Public notice of the request for qualifications shall conform to the procedures set forth in subsection (1) of section 44J of chapter 149. At

least 1 week before soliciting a request for qualifications for a guaranteed energy savings contract, a public agency shall notify the commissioner of energy resources in writing, in a form and including information as the commissioner of the division of capital asset management and maintenance shall prescribe by regulation, of the agency's intent to solicit qualifications. The notification, at a minimum, shall include a copy of the agency's request for qualifications. An acknowledgment of receipt, in a form and including information as the commissioner of the division of capital asset management and maintenance shall prescribe by regulation, shall be issued by the commissioner of energy resources to the public agency upon successful compliance with the requirements of this subsection. Qualifications shall be opened publicly, in the presence of 2 or more witnesses, at the time specified in the request for qualifications, and shall be available for public inspection. The provisions of sections 44A and 44B and sections 44E to 44H, inclusive, of said chapter 149 shall not apply to contracts procured pursuant to this section. Section 44D of said chapter 149 shall apply as appropriate to qualifications submitted for contracts under this section, and every such qualification shall be accompanied by (1) a copy of a certificate of eligibility issued by the commissioner of the division of capital asset management, and (2) by an update statement.

The public agency shall evaluate the qualified providers to determine which best meets the needs of the public agency by reviewing the following: (i) references of other energy savings contracts performed by the qualified providers; (ii) the certificate of eligibility and update statement provided by the qualified providers; (iii) the quality of the products proposed; (iv) the methodology of determining energy savings; (v) the general reputation and performance capabilities of the qualified providers; (vi) substantial conformity with the specifications and other conditions set forth in the request for qualifications; (vii) the time specified in the qualifications for the performance of the contract; and (viii) any other factors the public agency considers reasonable and appropriate, which factors shall be made a matter of record.

Respondents shall be evaluated only on the criteria set forth in the request for qualifications.

The public agency shall conduct discussions with, and may require public presentations by, each person who submitted qualifications in response to the request for qualifications regarding their qualifications, approach to the project and ability to furnish the required services. The public agency shall select in order of preference 3 such persons, unless fewer persons respond, they consider to be the most highly qualified to perform the required services. The agency may request, accept and consider proposals for the compensation to be paid under the contract only during competitive negotiations conducted pursuant to subsection (f).

(c) The public agency may cancel a request for qualifications, or may reject in whole or in part any and all proposals when the public agency determines that cancellation or rejection serves the best interests of the public agency. The public agency shall state in writing the reason for a cancellation or rejection.

(d) The public agency shall negotiate a contract with the most qualified person at compensation which the public agency determines is fair, competitive and reasonable. Should the public agency be unable to negotiate a satisfactory contract with the person considered to be the most qualified at a price the public agency determines to be fair, competitive and reasonable, negotiations with that person shall be formally terminated. The public agency shall then undertake negotiations with the second most qualified person. Failing accord with the second most qualified person, the public

agency shall terminate those negotiations and then undertake negotiations with the third most qualified person. Should the public agency be unable to negotiate a satisfactory contract with any of the selected persons, the public agency may select additional qualified providers who responded to the request for qualifications, in the order of their competence and qualification, and continue negotiations in accordance with this subsection until either an agreement is reached or the public agency cancels the request for qualifications.

(e) The decision of a public agency as defined by section 1, regarding the selection of a qualified provider shall be final and not subject to appeal except on the grounds of fraud or collusion.

(f) The public agency shall provide public notice of the meeting at which it proposes to award the guaranteed energy savings contract, of the name of the parties to the proposed contract, and of the purpose of the contract. The public notice shall be made at least 10 days before the meeting. The public agency shall promptly publish in the central register notice of the award and those public agencies other than state agencies and building authorities shall notify the commissioner of energy resources of such award and provide a copy of the guaranteed energy savings contract.

(g) The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the amount of energy savings guaranteed will be achieved or the qualified provider shall reimburse the public agency for the shortfall amount. Methods for measurement and verification of guaranteed savings shall conform to the most recent standards established by the Federal Energy Management Program of the United States Department of Energy. The secretary shall enforce the requirements of this section and regulations promulgated hereunder as they relate to public agencies except for state agencies and building authorities and shall have all the necessary powers to require compliance therewith. The commissioner of the division of capital asset management and maintenance shall enforce the regulations as they relate to state agencies and building authorities. Any order of the commissioner of energy resources under this subsection shall be effective and may be enforced according to its terms, and enforcement thereof shall not be suspended or stayed by the entry of an appeal. The superior court for Suffolk County shall have jurisdiction over appeals of orders of the commissioner of energy resources under this subsection, and shall also have jurisdiction upon application of the commissioner to enforce all orders of the commissioner under this subsection. The burden of proof shall be upon the appealing party to show that the order of the commissioner is invalid. An aggrieved person shall not be required to seek an order from the commission as a condition precedent to seeking any other remedy. The value of guaranteed savings may represent either all, or part of annual payments at the discretion of the agency. The guaranteed energy savings contract term for providing a guarantee, measurement and verification, maintenance, service and installment or lease payments shall not exceed 20 years. The division of capital asset management and maintenance, in concurrence with the state inspector general, shall promulgate regulations for the procurement of energy management services, including establishing safeguards to be included in guaranteed energy savings contracts. The regulations shall require the submission, at least annually, of information as the commission of the division of capital asset management and maintenance and the state inspector general consider necessary in order to monitor the costs and benefits of contracts for energy management services.

(h) Payments under a contract for energy management services may be based in whole or in part on any cost savings attributable to a reduction in energy and water consumption due to the contractor’s performance or

revenues gained due to the contractor's services which are aimed at energy and water cost savings.

(i) Unless no other manner of description suffices, and the public agency so determines in writing, setting forth the basis for the determination, all requirements shall be written in a manner which describes the requirements to be met without having the effect of exclusively requiring a proprietary supply or service, or a procurement from a sole source.

(j) Before entering into a guaranteed energy savings contract, the public agency shall require the qualified provider to file with the public agency a payment or a performance bond relating to the installation of energy savings measures, in an amount equal to 100 per cent of the estimated contract value from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570.

(k) Guaranteed energy savings contracts may extend beyond the fiscal year in which they become effective.

Section 16. There shall be within the department of clean energy, a division of green communities. The purpose of said division is to assist the commonwealth's municipalities and other governmental bodies: reduce energy consumption and costs, reduce pollution, facilitate the development of renewable and other clean energy resources, and create local jobs related to the building of clean energy facilities and the installation of energy-efficient equipment. The division may also award grants to provide technical assistance to municipalities qualifying as a green community pursuant to this section. The director of the division shall be responsible for the administration and oversight of a green communities program as established herein, and shall, apply and disburse monies and revenues of the Massachusetts Renewable Energy Trust Fund, established pursuant to section 22 of chapter 21A.

(a) In establishing a green community certification, the division shall consider whether municipalities and other governmental bodies have undertaken any other initiatives to reduce energy consumption, promote energy conservation or promote the development of clean energy generating facilities including, but not limited to, the following: (i) entering into long-term contracts, as may be defined by the division, for the purchase of clean energy; (ii) establishing an energy use baseline inventory for municipal buildings, street and traffic lighting and putting in place a comprehensive plan to reduce said baseline; (iii) adopting a policy of purchasing only fuel efficient municipal vehicles whenever such vehicles are commercially available and practicable; (iv) adopting an ordinance or by-law requiring any new commercial and industrial real estate development projects to minimize the life-cycle cost of the facility by utilizing energy efficiency, water conservation, or other clean energy technologies; (v) adopting a policy instituting a comprehensive energy education program for residential users of electricity; and (vi) aligning local building codes with the state energy efficiency code established pursuant to chapter 143. The division shall promulgate such regulations as are necessary to implement this program.

(b) The division shall establish a green communities program. The purpose of said program shall be to provide financial assistance, in the form of grants and loans, to municipalities and other governmental bodies that qualify as green communities pursuant to this section, to finance the costs of studying, designing, constructing and implementing energy efficiency activities, including but not limited to, energy conservation measures and projects; procurement of energy management services; installation of energy management systems; adoption of demand side reduction initiatives; adoption of energy efficiency policies; and the siting and construction of clean energy projects on municipally owned land. The division may also

award grants to provide technical assistance to municipalities applying to qualify as a green community pursuant to this section.

(c) In order to qualify as a green community a municipality or other governmental body shall: (i) file an application with the division in a form and manner to be prescribed by the division; and (ii) accept a designation as a qualifying clean energy community by the clean energy facility site screening committee and permit the construction of a minimum of 1 clean energy generating facility within the community on municipally or privately owned real property identified by the director as real property which could potentially be utilized to site clean energy generating facilities, clean energy research and development facilities, and clean energy manufacturing facilities pursuant to section 18; (iii) adopt an expedited application and permitting process pursuant to which clean energy generating facilities or clean energy research and development or manufacturing facilities may be sited within the municipality; provided, however, that said process shall not exceed 1 year from the date of initial application to the date of final approval; provided, further, that in lieu of adopting such an expedited application and permitting process a municipality or other governmental body may agree to transfer the right, without recourse to the municipality or other governmental body, to site clean energy generating facilities within the municipality to the energy facilities siting board established pursuant to section 64H of chapter 164; or (iv) agree to enter into a contract wherein the municipality or other governmental body shall purchase a fixed percentage of electricity consumed by municipally owned buildings, street and traffic lights from clean energy sources; provided, however, that the maximum percentage of clean energy generation required to satisfy this subsection shall not exceed 20 per cent of a municipality's total electric load as determined by the division.

(d) In determining the funding priority for municipalities and other governmental bodies qualifying as green communities pursuant to subsection (c), the director shall consider whether municipalities and other governmental bodies have undertaken any other initiatives to reduce energy consumption, promote energy conservation or promote the development of clean energy generating facilities including, but not limited to, the following: (1) entering into long-term contracts, as may defined by the director, for the purchase of clean energy to satisfy subsection (c); (2) establishing an energy use baseline inventory for municipal buildings, street and traffic lighting and putting in place a comprehensive plan to reduce said baseline; (3) adopting a policy of purchasing only fuel efficient municipal vehicles whenever such vehicles are commercially available and practicable; (4) adopting an ordinance or by-law requiring any new commercial and industrial real estate development projects to minimize the life-cycle cost of the facility by utilizing energy efficiency, water conservation, or other clean energy technologies; (5) adopting a policy instituting a comprehensive energy curriculum for use by the public schools within the municipality; (6) adopting a policy instituting a comprehensive energy education program for residential users of electricity; and (7) aligning local building codes with the state energy efficiency code established pursuant to chapter 143.

(e) The division shall establish general policy, guidelines and standards regarding energy conservation measures and projects; procurement of energy management services; installation of energy management systems; adoption of demand side reduction initiatives; adoption of energy efficiency policies; and the siting and construction of renewable energy projects on municipally

owned land and shall administer the green communities program in accordance with this chapter. The director of the division shall be responsible for the administration and oversight of the green communities program as established herein, and shall, in consultation with the secretary, apply and disburse monies and revenues of Massachusetts Renewable Energy Trust, established pursuant to section 22 of chapter 21A, alternative compliance payment funds, collected pursuant to 225 CMR 14.08(4); and other funds as proscribed herein.

(f) Funding for the green communities program in any 1 fiscal year shall be: (1) available from the revenues generated annually by the Massachusetts Renewable Energy Trust Fund, established pursuant to section 22 of chapter 21A; (2) up to 100 per cent of the revenues generated annually by the alternative compliance payment funds, established pursuant to 225 CMR 14.08(4); and (3) other funds as proscribed herein.

(g) A municipality or other governmental body served by a municipal lighting plant exempt from section 22 of chapter 21A and sections 19 and 20 of chapter 25, shall not be eligible for designation as a green community pursuant to this section.

(h) The division shall establish rules, regulations and guidelines for the administration and enforcement of this section, including, but not limited to, establishing applicant criteria, application forms and procedures, and energy efficiency product requirements.

Section 17. The department shall design and implement a competitive bidding procedure for the procurement of electric generation from clean energy generating facilities on behalf of municipalities seeking assistance with said procurement pursuant to section 16; provided further, that any such competitive bids received shall include payment options with rates that remain uniform for a minimum period of 5 years; and provided further, that in lieu of designing and implementing a competitive bidding process as required by this section, the director may become a member of one or more programs organized and administered by the Massachusetts Health and Educational Facilities Authority or its subsidiary organization for the purpose of such competitive group purchasing of electricity.

Section 18. There shall be within the department of clean energy, a clean energy site screening committee. The committee shall consist of 7 members, the commissioner of the department of clean energy who shall serve as chair; the secretary of the executive office of transportation and construction or his designee; the secretary of the executive office of economic development or his designee; the secretary of the executive office of energy and environmental affairs or his designee; the commissioner of the division of capital asset management and maintenance or his designee; the director of the Massachusetts municipal association or his designee; and the chair of the board of directors of the Massachusetts association of regional planning agencies or his designee.

The committee shall develop a statewide list of public and private real property which could be utilized to site clean energy generating facilities, clean energy research and development facilities, and clean energy manufacturing facilities. In determining the suitability of sites to be included on the statewide list the committee shall consider, without limitation, the energy capacity needs of the electric system, development and construction costs, the proximity of the site to the distribution and transmission system, the environmental impact of a project, the impact upon the public use and enjoyment of the potential site, the impact upon abutters to the potential site, the economic impact upon the host municipality and the region, and such other matters as the committee shall deem appropriate.

The committee shall annually submit a statewide list of any public and privately owned real property which could be utilized to site clean energy generating facilities, clean energy research and development facilities, and clean energy manufacturing facilities to the secretary of energy and environmental affairs. The secretary shall provide written notification to the host municipality of any real property within its jurisdiction that has been identified as real property which could potentially be utilized to site clean energy generating facilities, clean energy research and development facilities, and clean energy manufacturing facilities pursuant to this chapter. Said notice shall be sent to the city manager in the case of a city under a Plan E form of government, the mayor and city council in the case of all other cities, the chairman of the board of selectmen in the case of a town, the county commissioners, the regional planning agency, and the representatives to the general court representing said host municipality. The secretary shall set forth in such notice a description of the real property, including the identity of the owners of said real property, and a declaration that the real property is eligible for designation as a qualifying clean energy property. The host municipality shall, within 180 days from receipt of said notification, notify the secretary whether it will accept the designation of the real property as a qualifying clean energy property. A host municipality which accepts the designation of at least 1 parcel of real property identified as real property which could potentially be utilized to site clean energy generating facilities, clean energy research and development facilities, and clean energy manufacturing facilities shall, upon satisfying the requirements of section 16, qualify as a green community.

The committee shall, on or before December 31, annually submit a written report of its activities. Said report shall be submitted to the chair of the senate committee on ways and means, the chair of the house committee on ways and means, the chairs of the joint committee on telecommunications, utilities and energy, and the clerk of the senate and the clerk of the house of representatives.

SECTION 29. Section 2 of chapter 25B of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 11, the words “division of energy resources” and inserting in place thereof the following words:- department of clean energy.

“SECTION 29A. Chapter 30 of the General Laws, as so appearing, is hereby amended by inserting after section 36A the following section:-

Section 36B. The commissioner of administration shall establish and enforce regulations governing the fuel efficiency standards that all vehicles must meet. The average fuel efficiency for the entire fleet of passenger vehicles owned or leased by the commonwealth, except those vehicles used for emergency purposes, security purposes, and special services, shall not exceed the US Corporate Average Fuel Economy (CAFE) Standards as established by the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA).

SECTION 30. Section 1 of chapter 30B of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in

line 97, the words “division of energy resources” and inserting in place thereof the following words:- department of clean energy.

SECTION 31. Section 4E of chapter 40J is hereby repealed.

“SECTION 31A. Clause (i) of section 59 of chapter 40 of the General Laws, as so appearing, is hereby amended by adding at the end thereof the following:-

provided further, notwithstanding the aforementioned provisions of this clause, any property having been improved with a renewable energy generating source, as defined by subsection (b) of section 11F of chapter 25A, or alternative energy generating source, as defined by subsection (a) of section 11F1/2 of chapter 25A, shall be designated a TIF zone;"

SECTION 32. Section 1 of chapter 62 of the General Laws, as so appearing, is hereby amended by adding the following 2 paragraphs:-

(p) “Alternative fuel vehicle", a vehicle powered by alternative fuel and having the following attributes: the capability of operating only on an alternative fuel; original use commencing with the taxpayer; and acquisition by the taxpayer for use or lease, but not for resale.

(q) "Hybrid vehicle", (i) a vehicle which draws propulsion energy from onboard sources of stored energy which are both: (a) an internal combustion or heat engine using combustible fuel; and (b) a rechargeable energy storage system; (ii) a vehicle which, in the case of a passenger automobile, medium duty passenger vehicle or light truck: (a) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year; (b) for 2004 and later model vehicles, has received a certificate that the vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle; and (c) and achieves an increase of 10 per cent fuel efficiency as compared to the average vehicle of its class as defined by the federal Environmental Protection Agency.

SECTION 33. Part B of section 3 of said chapter 62, as so appearing, is hereby amended by inserting after paragraph 9 the following paragraph:-

(9½). For taxable years beginning on January 1, 2008, in the case of an individual who purchases a hybrid or alternative fuel vehicle there shall be a

deduction in the amount of $2,000 for a single person, for a person who qualifies as a head of household under subsection (b) of section 2 of chapter 62 or a married couple in the taxable year in which the purchase is made. The department of revenue may require a proof of purchase to be submitted with a return in order to be eligible for the deduction.

SECTION 34. Chapter 63 of the General Laws is hereby amended by inserting after section 38T following section:-

Section 38U. (a) A credit of up to $300 or 15 per cent, whichever is less, of the aggregate cost of the purchase and installation of a solar water heating system shall be allowed per return against the taxes imposed by this chapter for the cost of the retail purchase and installation of a solar water heating system in a commercial building.

(b) The commissioner of revenue shall promulgate rules and regulations necessary for the implementation of this section. The rules and regulations shall include provisions to prevent the generation of multiple credits with respect to the same property.

(c) The credit allowed under this section may be taken in the fiscal year in which any qualifying purchase was made. The amount of credit that exceeds the total tax due for the fiscal year in which the credit is taken may be carried over, as reduced, and applied against the tax liability for the next fiscal year; provided, however, that in no fiscal year may the amount of the credit allowed exceed the total tax due of the taxpayer for the relevant fiscal year.

SECTION 34A. Section 2 of chapter 70B of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 44 the words “4E of chapter 40J” and inserting in place thereof the following words:- 22 of chapter 21A.

SECTION 35. Section 16 of chapter 132A of the General Laws, as so appearing, is hereby amended by adding at the end of the first paragraph the following sentence:-

Notwithstanding any general or special law to the contrary, generating and transmission facilities for the production of energy via renewable resources, including but not limited to, solar photovoltaic or solar thermal electric energy, wind energy, ocean thermal, wave or tidal energy, and fuel cells utilizing renewable fuels, shall be a permitted use in any of the commonwealth’s ocean sanctuaries other than the Cape Cod ocean sanctuary.

SECTION 36. Section 94 of chapter 143 of the General Laws, as so appearing, is hereby amended by inserting after the word “ninety-six”, in line 61,the following words:- and including the energy conservation code.

SECTION 37. Said section 94 of said chapter 143, as so appearing, is hereby further amended by adding the following paragraph:-

(m) To adopt, at least once every 3 years, the latest edition of the model energy conservation code, the International Energy Conservation Code,

published by the International Code Council. No amendments to the Massachusetts energy conservation code shall be adopted that increase energy consumption in buildings. The board of building regulations and standards jointly with the department of clean energy shall adopt regulations to certify and train qualified energy code inspectors and require that all new construction and major renovations pass inspections by certified energy code inspectors demonstrating full compliance with the Massachusetts energy conservation code.

SECTION 38. Section 1 of chapter 164 of the General Laws, as so appearing, is hereby amended by inserting after the definition of "Articles of organization" the following definition:—

"Basic service", the electricity services provided to a retail customer upon either (i) the inability of a customer to receive competitive supply from a supplier pursuant to subsection (d) of section 1B, (ii) the failure of the retail customer to elect competitive supply from a supplier pursuant to said subsection (d) of said section 1B, or (iii) upon the expiration and the retail customers failure to renew a competitive supply contract pursuant to said subsection (d) of said section 1B or other means.

SECTION 39. Said section 1 of said chapter 164 of the General Laws, as so appearing, is hereby further amended by striking out the definition of "Default Service".

SECTION 40. Said chapter 164 is hereby further amended by striking out section 1 and inserting in place thereof the following section:

Section 1. As used in this chapter the following words shall, unless the context otherwise requires, have the following meanings:

"Aggregator", an entity which groups together electricity customers for retail sale purposes, except for public entities, quasi-public entities or authorities, or subsidiary organizations thereof, established pursuant to the laws of the commonwealth.

"Alternative energy development", shall include, but not be limited to, solar energy; wind; wood; alcohol; hydroelectric; biomass energy systems; renewable non-depletable; and recyclable energy sources.

"Alternative energy producer", any person, firm, partnership, association, public or private corporation, or any agency, department, board, commission or authority of the commonwealth or of a subdivision of the commonwealth, that owns or operates a cogeneration facility or small power production facility as defined in this section, and does not engage in the retail sale of electricity other than sales to customers that are within the confines of an industrial park, which park existed prior to March first, nineteen hundred and eighty-two, and in which park there existed as of said date electrical generating capacity of more than fifteen megawatts.

"Alternative energy property", any property powered in whole or in part by the sun, wind, water, biomass, alcohol, wood, or any renewable, non-depletable or recyclable fuel, and property related to the exploration, development, processing, transportation, and distribution of the aforementioned energy resources.

"Ancillary services", those functions which support generation, transmission, and distribution, and shall include the following services: (1) reactive power/voltage control; (2) loss compensation; (3) scheduling and dispatch; (4) load following; (5) system protection service; and (6) energy imbalance service.

"Articles of organization", (i) the articles of organization of a corporation which were filed subsequent to October 1, 1973, (ii) any

agreement of association, special act of incorporation, and other charter documents, including by-law provisions and stockholder votes in effect prior to October 1, 1973,, which, subsequent to that date, would be included in articles of organization, and all amendments thereto, effective prior to October 1, 1973, and (iii) any of the following amendments made or filed from time to time subsequent to October1, 1973:

(1) a certificate of a vote establishing a series filed pursuant to section 26 of chapter 156B;

(2) articles of amendment filed pursuant to section 8B;

(3) restated articles of organization filed pursuant to section 8C;

(4) certificates of confirmation of proceedings filed pursuant to section 8D;

(5) articles of consolidation or merger filed pursuant to section 102A;

(6) articles of dissolution filed pursuant to section 100 of chapter 156B;

(7) a certificate as to the revival of a corporation filed pursuant to section 108 of chapter 156B.

“Clean energy”, products or services that improve operational performance, productivity or efficiency, while reducing energy consumption, pollution, waste of natural resources, fossil fuel use or energy costs.

"Cogeneration facility", any electrical generating unit having a power production capacity which, together with any other facilities located at the same site, is not greater than thirty megawatts and which produces electric energy and steam or other form of useful energy utilized for industrial, commercial, heating or cooling purposes, and employs a fuel other than oil or gas as its primary energy source, except that gas may be used if it is produced from coal, biomass, solid waste, or wood and oil may be used (1) in combination with coal, in a mixture not exceeding 70 per cent oil, or (2) during any modifications to any existing electrical generating facility undertaken for the purpose of enabling such facility to employ, except during any periods of maintenance or repair, a fuel other than oil or gas as its primary energy source. A cogeneration facility shall also include any electric generating unit having a power production capacity which, together with any other facilities located at the same site, is not greater than 30 megawatts and which produces electric energy and steam or other form of useful energy utilized for industrial, commercial, heating or cooling purposes that is within the confines of an industrial park, which park existed prior to March 1, 1982 and, in which park there existed, as of said date, electrical generating capacity of more than 15 megawatts, and in which park there existed, since said date, a cogeneration facility, as defined herein, or a small power production facility.

“Committee”, the clean energy site screening committee established pursuant to section 4.

"Contract termination fee", the fees owed by the distribution company to its wholesale power supplier, as determined and approved by the department of public utilities.

"Corporation", a corporation to which this chapter applies, as set forth in section three.

"Default service", the electricity services provided to a retail customer upon either the (i) failure of a distribution company or supplier to provide such electricity services as required by law or as contracted for under the standard service offer, (ii) the completion of the term of the standard service offer, or (iii) upon the inability of a customer to receive standard service transition rates during the term of the standard service offer pursuant to section 1B.

"Department", the department of public utilities.

"Distributed generation", a generation facility or renewable energy facility connected directly to distribution facilities or to retail customer facilities which alleviate or avoid transmission or distribution constraints or the installation of new transmission facilities or distribution facilities.

"Distribution", the delivery of electricity over lines which operate at a voltage level typically equal to or greater than 110 volts and less than 69,000 volts to an end-use customer within the commonwealth. The distribution of electricity shall be subject to the jurisdiction of the department of public utilities.

"Distribution company", a company engaging in the distribution of electricity or owning, operating, or controlling distribution facilities; provided, however, a distribution company shall not include any entity which owns or operates plant or equipment used to produce electricity, steam, and chilled water, or any affiliate engaged solely in the provision of such electricity, steam, and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and non-profit educational institutions, and where such plant or equipment was in operation prior to January 1, 1986.

"Distribution facility", plant or equipment used for the distribution of electricity and which is not a transmission facility, a cogeneration facility, or a small power production facility.

"Distribution service", the delivery of electricity to the customer by the electric distribution company from points on the transmission system or from a generating plant, at distribution voltage.

"Electric company", a corporation organized under the laws of the commonwealth for the purpose of making by means of water power, steam power or otherwise and selling or transmitting and selling, or transmitting only, or distributing and selling, or only distributing, electricity within the commonwealth, or authorized by special act so to do, even though subsequently authorized to make or sell gas; provided, however, that electric company shall not mean an alternative energy producer; and provided, further, that a distribution company shall not include any entity which owns or operates a plant or equipment used to produce electricity, steam, and chilled water, or any affiliate engaged solely in the provision of such electricity, steam, and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and nonprofit educational institutions, and where such plant or equipment was in operation before January 1, 1986; and provided, further, that electric company shall not mean a corporation only transmitting and selling, or only transmitting, electricity unless such corporation is affiliated with an electric company organized under the laws of the commonwealth for the purpose of distributing and selling or distributing only, electricity within the commonwealth.

"Electric service", the provision of generation, transmission, distribution, or ancillary services.

“End-user”, any individual, corporation, firm or subsidiary of any firm that is an ultimate consumer of petroleum products and which, as part of its normal business practices, purchases or obtains petroleum products from a wholesaler or reseller and receives delivery of that product.

“Energy audit”, a determination of the energy consumption characteristics of a building or facility which identifies the type, size, and rate of energy consumption of such building or facility and the major energy using systems of such building or facility; determines appropriate energy conservation maintenance and operating procedures; and indicates the need, if any, for the acquisition and installation of energy conservation measures or alternative energy property.

“Energy conservation”, shall include, but not be limited to, the modification of or change in operation of real or personal property in a manner likely to improve the efficiency of energy use, and shall include energy conservation measures, and any process to audit or identify and specify energy and cost savings.

“Energy conservation measures”, measures involving modifications of maintenance and operating procedures of a building or facility and installations therein, which are designed to reduce energy consumption in such building or facility, or the installation, modification of an installation in a building or facility which is primarily intended to reduce energy consumption.

“Energy conservation projects”, projects to promote energy conservation, including but not limited to energy conserving modification to windows and doors; caulking and weatherstripping; combined heat and power facilities; insulation, automatic energy control systems; hot water systems; equipment required to operate variable steam, hydraulic, and ventilating systems; plant and distribution system modifications including replacement of burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; and, cogeneration systems.

"Energy efficiency", the implementation of an action, policy, or measure which entails the application of the least amount of energy required to produce a desired or given output.

“Energy management services”, a program of services, including energy audits, energy conservation measures, energy conservation projects, or a combination thereof, and building maintenance and financing services, primarily intended to reduce the cost of energy and water in operating one or more buildings, which may be paid for in whole or in part, by cost savings attributable to a reduction in energy and water consumption which result from such services.

"FERC", the federal energy regulatory commission.

"Gas company", a corporation organized for the purpose of making and selling, or distributing and selling, gas within the commonwealth, even though subsequently authorized to make or sell electricity; provided, however, that gas company shall not mean an alternative energy producer.

"Generation", the act or process of transforming other forms of energy into electric energy, or the amount of electric energy so produced.

"Generation company", a company engaged in the business of producing, manufacturing, or generating electricity or related services or products including, but not limited to, renewable energy generation attributes for retail sale to the public.

"Generation facility", plant or equipment used to produce, manufacture, or otherwise generate electricity and which is not a transmission facility.

"Generation service", the provision of generation and related services to a customer.

“Green Building”, buildings, including but not limited to, homes, offices, schools, and hospitals constructed or renovated to incorporate design techniques, technologies, and materials that lessen its dependence on fossil fuels and minimize its overall negative environmental impact.

"Horizontal market power", a situation in which one or a few market participants combined have undue concentration in the ownership of facilities at the same level in the chain of production resulting in the ability to influence price to his or their own benefit.

"Mitigation", all actions or occurrences which reduce the amount of money that a distribution company seeks to collect through the transition

charge, including those amounts resulting from both matters within the company's control and from matters not wholly within the company's control. Mitigation shall, in accordance with the provisions of section 1G, include, but not be limited to, the following: (1) sales of capacity, energy, ancillary services, reserves, and emission allowances from generating facilities that are wholly or partly owned by the company; (2) sales of capacity, energy, ancillary services, reserves, and emission allowances from generating facilities with which the company has a power purchase agreement; (3) adjustments to the company's minimum obligations under purchase power agreements that decrease such obligations, such as those that may be obtained through contract buy-out or renegotiation; (4) residual value; (5) sales and voluntary write downs of company generation-related assets; (6) any market value in excess of net book value associated with the sale, lease, transfer, or other use of the assets of the company unrelated to the provision of transmission service or distribution service at regulated prices, including, but not limited to, rights-of-way, property, and intangible assets when the costs associated with the acquisition of those assets have been reflected in the company's rates for regulated service; provided, however, that the department of public utilities shall determine their market values based on the highest prices that such assets could reasonably realize after an open and competitive sale; and (7) any allowed refinancing of stranded assets or other debt obligations as provided by law.

“Non-renewable energy supply and resource development”, shall include, but not be limited to, gasoline, natural gas, coal, nuclear energy, petroleum both offshore and onshore, and facilities related to the exploration, development, processing, transportation, and distribution of such resources and programs established for the allocation of supplies of such resources and the development of supply shortage contingency plans.

“Petroleum products”, propane, gasoline, unleaded gasoline, kerosene, #2 heating oil, diesel fuel, kerosene base jet fuel, and #4, 5, and 6 residual oil for utility and non-utility uses, and all petroleum derivatives, whether in bond or not, which are commonly burned to produce heat, power, electricity, or motion or which are commonly processed to produce synthetic gas for burning.

"Primary energy source", the fuel or fuels used, except during periods of maintenance or repair, for the generation of electric energy, except that such term does not include the minimum amounts of fuel required for ignition, start-up, testing, flame stabilization, and control uses, and minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies declared by the governor, directly affecting the public health, safety, and welfare which would result from electric power outages.

"Renewable energy" or "renewables", either (i) resources whose common characteristic is that they are nondepletable or are naturally replenishable but flow-limited, or (ii) existing or emerging non-fossil fuel energy sources or technologies, which have significant potential for commercialization in New England and New York, and shall include the following: solar photovoltaic or solar thermal electric energy; wind energy; ocean thermal, wave, or tidal energy; geothermal; fuel cells; landfill gas; waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; naturally flowing water and hydroelectric; and low-emission, advanced biomass power conversion technologies, such as gasification using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel. The following technologies or fuels shall not be

considered renewable energy supplies: coal, oil, natural gas except when used in fuel cells, and nuclear power.

“Reseller”, any person, corporation, firm or subsidiary of any firm that carries on the trade or business of purchasing petroleum products and reselling them without substantially changing their form, or any wholesaler or retail seller of electricity or natural gas.

"Residual value", the value of electric company assets, not including the income which may be obtained through generation facility operation.

"Retail access", the use of transmission and distribution facilities owned by a transmission company or a distribution company to transmit or distribute electricity from a generation company, supplier, or aggregator to retail customers.

"Retail customer", a customer who purchases electricity for its own consumption.

"Securitization", the use of rate reduction bonds to refinance debt and equity associated with transition costs pursuant to section 1H.

"Service territory", the geographic area in which a distribution company provided distribution service on July 1, 1997.

"Small power production facility", a facility which is any electrical generating unit which produces electric energy solely by the use, as a primary energy source, of biomass, waste, wind, water, wood, geothermal, solar energy, or any combination thereof, or produces gas if it is produced from coal, biomass, solid waste or wood, and has a power production capacity which, together with any other facilities located at the same site is not greater than 30 megawatts.

“Steam distribution company,” any person, firm, partnership, association or private corporation organized under the laws of the commonwealth for the purpose of operating any plant or equipment or facilities for the manufacture, production, transmission, furnishing or distribution of steam to or for the public for compensation within the commonwealth, and provided further, that steam distribution company shall not mean an entity producing or distributing steam exclusively on private property and solely for the entity’s use or the use of the entity’s tenant, and not for distribution or sale.

"Supplier", any supplier of generation service to retail customers, including power marketers, brokers, and marketing affiliates of distribution companies, except that no electric company shall be considered a supplier.

"Supplying electricity in bulk", engaging in the business of making and selling or distributing and selling electricity to electric companies, railroads, street railways or electric railroads, or to municipalities for municipal use or re-sale to their inhabitants, or to persons, associations or corporations under limitations imposed by special law or under section 90 or corresponding provisions of earlier laws.

"Transition charge", the charge that provides the mechanism for recovery of an electric company's transition costs.

"Transition costs", the embedded costs as determined pursuant to section 1H which remain after accounting for maximum possible mitigation, subject to determination by the department of public utilities.

"Transmission", the delivery of power over lines that operate at a voltage level typically equal to or greater than 69,000 volts from generating facilities across interconnected high voltage lines to where it enters a distribution system.

"Transmission company", a company engaging in the transmission of electricity or owning, operating, or controlling transmission facilities. A transmission company shall provide transmission service to all generation companies, municipal lighting plants, suppliers, and load aggregators in the

commonwealth, whether affiliated or not, on comparable, nondiscriminatory prices and terms, pursuant to provisions of federal law and regulation.

"Transmission facility", plant or equipment used for the transmission of electricity, as determined by the federal energy regulatory commission pursuant to federal law and regulation.

"Transmission service", the delivery of electricity to a retail customer, supplier, distribution company, or wholesale customer by a transmission company.

"Unbundled rates", rates designed to separate the costs of providing generation, the costs of transmission and distribution services, and transition and general access charges.

"Vertical market power", a situation in which one or a few market participants, having joint ownership of facilities at differing levels of the chain of production, such as generation, transmission, and distribution, possess the ability to use such joint ownership to influence price to the participants' own benefit.

"Wholesaler", any person, corporation, firm or any part or subsidiary of any firm which supplies, sells, transfers, or otherwise furnishes petroleum products to resellers or end-users.

"Wholesale generation company", a company engaged in the business of producing, manufacturing, or generating electricity for sale at wholesale only.

SECTION 41. Section 1E of said chapter 164, as so appearing, is hereby amended by striking out subsection (c) and inserting in place thereof the following subsection:-

(c) Each distribution, transmission, and gas company shall file a report with the department by March 1 of each year comparing its performance during the previous calendar year to the department's service quality standards and any applicable national standards as may be adopted by the department. The department shall be authorized to levy a penalty against any distribution, transmission, or gas company which fails to meet the service quality standards in an amount up to and including the equivalent of 4 per cent of such company's transmission and distribution service for the previous calendar year.

SECTION 42. Section 1F of said chapter 164, as so appearing, is hereby amended by striking out, in line 90, the words "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 43. Subparagraph (i) of paragraph (4) of section 1F of said chapter 164, as so appearing, is hereby amended by striking out the second, third and fourth paragraphs.

SECTION 44. Said section 1F of said chapter 164, as so appearing, is hereby further amended by striking out subparagraph (ii).

SECTION 45. Said section 1F of said chapter 164, as so appearing, is hereby further amended by striking out subparagraph (iii) and inserting in place thereof the following subparagraph:-

(iii) A residential customer eligible for low-income discount rates shall receive the service on demand. Each distribution company shall periodically notify all customers of the availability of and method of obtaining low-income discount rates. An existing residential customer eligible for low-income discount on the date of start of retail access who

orders service for the first time from a distribution company shall be offered standard basic service by that distribution company.

SECTION 46. Section 1G of said chapter 164, as so appearing, is hereby amended by striking out, in lines 366 and 367, the words "government regulations" and inserting in place thereof the following words:— telecommunications, utilities and energy.

SECTION 47. Section 69G of said chapter 164, as so appearing, is hereby amended by inserting after the definition of "Board" the following definition:-

"Clean energy generating unit", any bulk electric generating unit, including associated buildings and structures and electric transmission lines, operating at a gross capacity of 1 megawatt or more, which generates all of its electricity from 1 or more of the following sources: solar photovoltaic and solar thermal energy; wind energy; geothermal energy; ocean thermal, wave, or tidal energy; fuel cells; landfill gas; naturally flowing water and hydroelectric; low emission advanced biomass power conversion technologies using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel storage and conversion technologies connected to qualifying generation projects, as well as combined heat and power facilities which burn only natural gas; and such other types of facilities as the secretary of the executive office of energy and environmental affairs may from time to time designate.

SECTION 48. Said section 69G of said chapter 164, as so appearing, is hereby further amended by striking out the definition of "Generating facility" and inserting in place thereof the following definition:-

"Generating facility", a clean energy generating unit located in a municipality which has transferred its authority to permit the siting of clean energy generating units within the municipality to the board pursuant to section 16 of chapter 25A and any generating unit designed for or capable of operating at a gross capacity of 100 megawatts or more, including associated buildings, ancillary structures, transmission and pipeline interconnections that are not otherwise facilities, and fuel storage facilities.

SECTION 49. Section 69H of said chapter 164, as so appearing, is hereby amended by striking out, in line 18, the words "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 50. Section 76D of said chapter 164, as so appearing, is hereby amended by inserting after the word "companies", in lines 1 to 2, line 14 , the third time it appears, and in line 20, the second time it appears, in each instance, the following words:- ,steam distribution companies.

SECTION 51. Said section 76D of said chapter 164, as so appearing, is hereby further amended by inserting after the word "company", in line 9, the following words:- ,steam distribution company.

SECTION 52. Said chapter 164 is hereby further amended by inserting after section 76D the following section:-

Section 76E. The department shall adopt inspection, maintenance, repair, and replacement standards for the distribution systems of investor-owned electric and gas utilities doing business in the commonwealth no later than June 1, 2008. Said standards, which shall be performance or

prescriptive standards, or both, as appropriate, for each substantial type of distribution equipment or facility, shall provide for inspection cycles for all overhead and underground facilities and shall establish a criteria for maintenance and replacement of said facilities to minimize or prevent service interruptions and to ensure high quality, safe and reliable service. In establishing the standards required by this section, the department shall consider cost, local geography and weather, applicable codes, national electric industry practices, sound engineering judgment, and experience. The department shall require each utility to maintain detailed records on its inspection and maintenance activities and to submit annual compliance reports to the department.

The department shall conduct an annual review to determine whether the standards established pursuant to this section have been satisfied. If the department finds that the standards have not been satisfied, the department may order appropriate sanctions, including penalties in the form of rate reductions or monetary fines.

SECTION 53. Said chapter 164 is hereby further amended by striking out section 96, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

Section 96. Companies subject to this chapter and their holding companies may, notwithstanding any other provisions of this chapter or of any general or special law, consolidate or merge with 1 another, or may sell and convey their properties to another of such companies or to a wholesale generation company and such other company may purchase such properties, provided that such purchase, sale, consolidation or merger, and the terms thereof, have been approved, at meetings called therefore, by vote of the holders of at least two thirds of each class of stock outstanding and entitled to vote on the question of each of the contracting companies, and that the department, after notice and a public hearing, has determined that such purchase and sale or consolidation or merger, and the terms thereof, are consistent with the public interest; provided, however, that in making such a determination the department shall at a minimum consider: proposed rate changes, if any; the long term strategies that will assure a reliable, cost effective energy delivery system; any anticipated interruptions in service; or other factors which may negatively impact customer service; and provided, further, that the purchase or sale of properties by, or the consolidation or merger of, wholesale generation companies shall not require departmental approval.

SECTION 54. Said chapter 164 is hereby further amended by striking out section 115A, as so appearing, and inserting in place thereof the following section:—

Section 115A. (a) Each meter for measuring gas provided to a consumer by a gas company, or municipal lighting plant shall, not later than 7 years from the date of installation or replacement, be removed by said company or municipal lighting plant from the premises of the consumer and replaced with such a meter which has been newly tested, sealed and stamped in accordance with law.

(b) Any gas company or municipal lighting plant which violates any provision of this section, unless in the opinion of the department such violation is due to unavoidable cause, accident or lack of materials, shall forfeit $50 for each meter which is not removed and replaced as provided herein. Forfeitures incurred under this section shall not be included as expenses in connection with the establishment of rates by said companies.

The department may promulgate rules and regulations for the administration and enforcement of this section.

SECTION 55. Section 116B of said chapter 164, as so appearing, is hereby amended by adding the following paragraph:-

Any gas company found by the department to have knowingly violated this section shall be subject to a fine of not less than $500 nor more than $1,000 for each violation. Penalties and fees incurred under this section shall not be included as expenses in connection with the establishment of rates by said company.

SECTION 56. Section 134 of said chapter 164, as so appearing, is hereby amended by striking out, in lines 31, 51 and 75, the words "division of energy resources" and inserting in place thereof, in each instance, the following words:- department of clean energy.

SECTION 57. Said section 134 of said chapter 164, as so appearing, is hereby further amended by striking out, in lines 45, 49, 56, 64, and in line 74, the words “standard offer” and inserting in place thereof, in each instance, the following words:- basic service

SECTION 57A. Said section 134 of said chapter 164, as so appearing, is hereby further amended by striking out, in line 92, the words “subsection (a) of chapter 40J” and inserting in place thereof the following words:- section 22 of chapter 21A.

SECTION 58. Said chapter 164 is hereby further amended by adding the following 5 sections:-

Section 138. As used in sections 138 to 140, inclusive, the following words shall, unless the context otherwise requires, have the following meanings:-

“Class I net metering credit”, a credit equal to the excess kilowatt-hours by time of use billing period (if applicable) multiplied by the sum of the distribution company’s (i) default service kilowatt-hour charge in the ISO-NE load zone where the customer is located, (ii) distribution kilowatt-hour charge, (iii) transmission kilowatt-hour charge, and (iv) transition kilowatt-hour charge. This shall not include the demand-side management and renewable energy kilowatt-hour charges set forth in sections 19 and 20 of chapter 25. The credit for a Class I net metering facility not using solar or wind as its energy source will be the average monthly clearing price at the ISO-NE.

“Class I net metering facility”, any plant or equipment that is used to produce, manufacture, or otherwise generate electricity and that is not a transmission facility and that has a design capacity of 60 kilowatts or less.

“Class II net metering credit”, a credit equal to the excess kilowatt-hours by time of use billing period (if applicable) multiplied by the sum of the distribution company’s (i) default service kilowatt-hour charge in the ISO-NE load zone where the customer is located, (ii) distribution kilowatt-hour charge, (iii) transmission kilowatt-hour charge, (iv) transition kilowatt-hour charge. This does not include the demand-side management and renewable energy kilowatt-hour charges.

“Class II net metering facility”, a Solar-net-metering facility or wind-net-metering facility that has a generating capacity of more than 60 kilowatts and not more than 1 megawatt.

“Class III net metering credit”, a credit equal to the excess kilowatt-hours by time of use billing period (if applicable) multiplied by the (i) distribution company’s default service kilowatt-hour charge in the ISO-NE load zone where the Customer is located, (ii) transmission kilowatt-hour

charge, and (iii) transition kilowatt-hour charge. This does not include the demand-side management and renewable energy kilowatt-hour charges set forth in sections 19 and 20 of chapter 25.

"Class III net metering facility", a solar-net-metering or wind-net-metering facility with a generating capacity of more than 1 megawatt but less than or equal to 2 megawatts.

"Customer", a customer of a distribution company that is entitled to the net metering credits and includes the net metering facility itself.

"ISO-NE," the independent system operator – New England.

"Neighborhood", a geographic area including and limited to a unique community of interests that is recognized as such by residents of such area and which in addition to residential and undeveloped properties may encompass commercial properties.

"Neighborhood net metering facility", a Class I, II, or III net metering facility that: (a) is owned by a group of 10 or more residential customers that reside in a single neighborhood and are served by a single distribution company; and (b) is located within the same neighborhood as the customers that own the facility.

"Neighborhood net metering credit", a credit equal to the excess kilowatt-hours by time of use billing period, if applicable, multiplied by the (i) distribution company's default service kilowatt-hour charge in the ISO-NE load zone where the customer is located, (ii) transmission kilowatt-hour charge, and (iii) transition kilowatt-hour charge. This shall not include the demand-side management and renewable energy kilowatt-hour charges set forth in sections 19 and 20 of chapter 25.

"Net metering", the process of measuring the difference between electricity delivered by a distribution company and electricity generated by a Class I, Class II, Class III, or neighborhood net metering facility and fed back to the distribution company.

"Solar net metering facility", a facility for the production of electrical energy that uses sunlight to generate electricity and is interconnected to a distribution company.

"Wind net metering facility", a facility for the production of electrical energy that uses wind to generate electricity and is interconnected to a distribution company.

Section 139. (a) A distribution company customer that uses electricity generated by a Class I or Class II net metering facility may elect net metering as follows:-

(1) If the electricity generated by the Class I or Class II net metering facility during a billing period exceeds the customer's kilowatt-hour usage during the billing period, the customer shall be billed for 0 kilowatt-hour usage and the excess Class I or Class II net metering credits shall be credited to the customer's account. Credits may be carried forward from month to month. A Class I or Class II Wind or solar net metering facility may designate one or more customers that are customers of the same distribution company to which the Class I or Class II wind or solar net metering facility is interconnected and located in the same ISO-NE load zone to receive such credits in amounts attributed by the Class I or Class II wind or solar net metering facility. Written notice of the identity of the customers so designated and the amounts of the credits to be attributed to such customers shall be in a form as the distribution company shall reasonably require.

(2) If the customer's kilowatt-hour usage exceeds the electricity generated by the Class I or Class II net metering facility during the billing period, the customer shall be responsible for the balance at the distribution company's applicable rate.

(b) A distribution company customer that uses electricity generated by a Class III net metering facility may elect net metering as follows:-

(1) If the electricity generated by the Class III net metering during a billing period exceeds the customer's kilowatt-hour usage during the billing period, the customer shall be billed for 0 kilowatt-hour usage and the excess Class III net metering credits shall be credited to the customer's account. Credits may be carried forward from month to month. A Class III wind or solar net metering facility may designate 1 or more customers that are customers of the same distribution company to which the Class III wind or solar net metering facility is interconnected and are located in the same ISO-NE load zone to receive such credits in amounts attributed to such customers by the Class III wind or solar net metering facility. Written notice of the identity of the customers so designated and the amounts of the credits to be attributed to such customers shall be in a form as the distribution company shall reasonably require.

(2) If the customer's kilowatt-hour usage exceeds the electricity generated by the Class III net metering facility during the billing period, the customer shall be responsible for the balance at the distribution company's applicable rate.

(c) The distribution portion of any Class I, Class II, or Class III net metering credits and distribution company delivery charges displaced by a Class I, Class II, or Class III net metering facility shall be aggregated by the distribution company and billed to all customers on an annual basis through a uniform per kilowatt-hour surcharge or surcharges.

(d) The distribution company shall have 1 or more tariffs, as approved or as may be approved from time to time by the department, regarding necessary interconnection studies and the type, costs, and timeframe for installing metering and distribution system upgrades to accommodate these installations. Such tariffs shall require that all facilities maintain adequate insurance as required under the tariffs. Distribution companies shall be prohibited from imposing special fees on Class I net metering facilities, such as backup charges and demand charges, or additional controls, or liability insurance, as long as the facility meets the other requirements of the interconnection tariff and all relevant safety and power quality standards.

Prior to providing net metering service under this section, a Class II or III net metering facility shall provide all necessary information to and cooperate with the distribution utility to which it is interconnected to enable the distribution utility to obtain the appropriate asset identification for reporting generation to ISO-NE.

(e) A Class I, II or III net metering facility shall not be an "electric utility," "generation company," "aggregator," "supplier," "energy marketer" or "energy broker" within the meaning of those terms as defined in sections 1 and 1F.

(f) The aggregate capacity of net metering shall not exceed 1 per cent of the distribution company's peak load. For the purpose of calculating the aggregate capacity, the capacity of a Solar net metering facility shall be eighty per cent of the facility's direct current rating at standard test conditions and the capacity of a Wind net metering facility shall be the nameplate rating.

Section 140. A neighborhood net metering facility shall elect net metering as follows:-

(a) If the electricity generated by the neighborhood net metering facility during a billing period exceeds its kilowatt-hour usage during the billing period, the neighborhood net metering facility shall be billed for 0 kilowatt-hour usage and the excess neighborhood net metering credits shall be credited to those customers identified by the neighborhood net metering

facility as being served by the same company to which the neighborhood net metering facility is interconnected, residing in the same neighborhood in which is neighborhood net metering facility is located, and have an ownership interest in the neighborhood net metering facility. The amount of the excess neighborhood net metering credits to be attributed to each such customer shall be determined by the allocation provided by the neighborhood net metering facility. Credits may be carried forward by such customers from month to month. Written notice of the identity of the customers so designated and the allocation of the credits to be attributed to such customers shall be in such form as the distribution company shall reasonably require.

(b) The department shall promulgate rules and regulations necessary to carry out this section, including, but not limited to, further definition of the term "neighborhood" and limitations on the number of customers that may be designated by neighborhood net metering facilities to receive neighborhood net metering credits.

Section 141. In all decisions or actions regarding rate designs, the department shall consider the impacts of such actions including new financial incentives on the successful development of energy efficiency and on-site generation. Where the scale of on-site generation would have an impact on affordability for low-income customers, a fully compensating adjustment shall be made to the low-income rate discount.

Section 142. The department shall continue to remove any impediments to the development of efficient, low-emissions distributed generation, including combined heat and power, taking into account the need to appropriately allocate any associated costs in a fair and equitable manner. For the purposes of this section, "efficient, low-emissions" shall mean an efficiency of 60 per cent or greater on an annual basis and emissions lower than required by the department of environmental protection.

SECTION 59. The General Laws are hereby further amended by inserting after chapter 164A the following chapter:-

Chapter 164B

REGULATION OF STEAM DISTRIBUTION COMPANIES

Section 1. The department shall have supervision of facilities operated by steam distribution companies for the sole purpose of ensuring public safety and shall establish reasonable rules and regulations pertaining to the construction and operation of steam distribution facilities and equipment used in manufacturing and transporting steam. The department shall keep itself informed as to the methods, practices, and condition of all facilities and equipment associated with the distribution of steam, including ducts and conduits, and shall make such examinations and investigations of the steam distribution system as necessary, including the adequacy of operation, maintenance and capital improvements to insure safe operation of facilities operated by a steam distribution company.

Section 2. Each steam distribution company shall file a certified copy of its certificate of incorporation and bylaws with the department. By March first of each year each company shall file a report on safety related matters as the department may specify, including but not limited to number, duration and causes of all steam leakage incidents, distribution system accidents and service outages, time elapsed between the incident and the return to service following a repair. The department is authorized to levy fines or penalties against any steam distribution company for failure to comply with

regulations promulgated by the department. In determining the appropriateness of any fine or penalty, the department shall consider the seriousness of the violation and the good faith compliance efforts of the steam distribution company.

Section 3. The department shall provide written notice to attorney general of any violation of this chapter. The department's authority shall not diminish the authority of any municipality to regulate steam distribution, nor shall it diminish the authority of the department of public safety pursuant to chapter 146.

SECTION 61. There is hereby established a commission which shall study the siting of energy facilities in the commonwealth. Said study shall include, but not be limited to, the following: (i) the development of a procedure for coordinating and consolidating applications to construct generating facilities between and among the energy facilities siting board, the department of environmental protection, and other appropriate agencies, to enable one-stop shopping, so-called, for necessary permits or certificates or other appropriate streamlining of the permitting system; (ii) the expansion of such coordinated procedures to other energy facilities, if appropriate; (iii) possible changes to the energy facilities siting board's procedures for reviewing electric and gas transmission lines in light of recent and proposed changes in the structure and regulation of the electric and gas industries, including regional approaches to the siting of such facilities; (iv) clarification of the energy facilities siting board's jurisdiction over the re-powering of existing generating facilities at existing sites and the appropriate standards for reviewing such re-powerings; (v) the development of coordinated procedures to encourage the reuse of existing industrial sites for the development of generating facilities; (vi) the issue of application fees paid by developers to the energy facilities siting board and the correlation of such fees to the board's procedures, as statutorily revised pursuant to this act, in reviewing such applications; provided, that said study shall include, but not be limited to, recommendations, if any, on reducing the application fee paid by developers to the board in light of the board's statutorily revised standards of review of such applications pursuant to this act; (vii) the establishment of a site characterization and suitability commission within the department of environmental protection, which would promulgate criteria to be applied to sites included in an application before the energy facilities siting board and rule on suitability of a proposed site as before said application is approved; and (viii) the possibility of requiring applicants to provide either (a) evidence that the proposed facility would employ the best available and most efficient technology to control and reduce water withdrawals, or (b) a description of the environmental impacts, costs, and reliability of the water withdrawal method chosen and an explanation of why the proposed technology was chosen.

Said commission shall consist of the secretary of the executive office of energy and environmental affairs, or his designee, who shall serve as the chairman of said study commission; the commissioner of the department of environmental protection, or his designee; a member of the energy facilities siting board other than the secretary of energy and environmental affairs, who shall be selected to serve on said commission by the governor; "the house and senate

chairmen of the joint committee on telecommunications, utilities and energy and the ranking minority members of said committee; the house and senate chairmen of the joint committee economic development and emerging technologies and the ranking minority members of said committee;"; and 10 members to be appointed by the governor, 1 of whom shall be a representative of the Massachusetts Municipal Association, 1 of whom shall be a representative of the Massachusetts Association of Health Boards, 2 of whom shall be a representative of an environmental protection organization, 2 of whom shall be representatives of the electric industry, including one member of the electric generation industry and one member representing an electric utility, 1 of whom shall be a representative of the gas industry, 1 of whom shall represent residential ratepayers, and 2 of whom shall be recommended by the Massachusetts AFL-CIO. Said study commission shall issue a final report, which shall include the results of its review and analysis, to the joint committee on telecommunications, utilities and energy, and the house and senate committees on ways and means on or before January 1, 2009.

SECTION 62. Commencing on July 1, 2008, and continuing for a period of 5 years thereafter, each distribution company, as defined in section 1 of chapter 164 of the General Laws, shall be required twice in that 5 year period to solicit proposals from renewable energy developers and, provided reasonable proposals have been received, enter into cost effective long-term contracts to facilitate the financing of renewable energy generation within the jurisdictional boundaries of the commonwealth including state waters, or in adjacent federal waters. Said distribution companies may also voluntarily solicit additional such proposals over the 5 year period. The timetable and method for solicitation and execution of such contracts shall be proposed by the distribution company in consultation with the department of clean energy and shall be subject to review and approval by the department. This long-term contracting obligation shall be separate and distinct from the electric distribution companies' obligation to meet applicable annual Renewable Portfolio Standard, hereinafter referred to as RPS requirements, set forth in section 11F of chapter 25A of the General Laws.

For purposes of this section, a long-term contract is defined as a contract with a term of 10 to 15 years. In developing the provisions of

proposed long term contracts, the distribution company shall consider multiple contracting methods, including long-term contracts for Renewable Energy Certificates, hereinafter referred to as RECs, for energy, and for a combination of both RECs and energy. The electric distribution company shall select a reasonable method of soliciting proposals from renewable energy developers, which may include public solicitations, individual negotiations, or other methods. The distribution company may decline to consider contract proposals having terms and conditions that it determines would require the contract obligation to place an unreasonable burden on the distribution company's balance sheet. The distribution company shall consult with the division of energy resources regarding its choice of contracting methods and solicitation methods. All proposed contracts shall be subject to department of public utilities review and approval.

The department of public utilities and the department of clean energy each shall adopt regulations consistent with this section. The regulations shall: (a) allow renewable energy developers to submit proposals for long-term contracts conforming to the contracting methods specified in the second paragraph of this section; (b) require that any contracts executed by the distribution company pursuant to such proposals are filed with and approved by the department of public utilities before they become effective. As part of its approval process, the department of public utilities shall consider the recommendations of the office of the attorney general relevant to such contracts, which recommendations shall be submitted to the department within 45 days following the filing of such contracts with the department. The department of public utilities shall take into consideration both the potential costs and benefits of such contracts, and shall approve such contracts only upon a finding that they are a cost effective mechanism for procuring renewable energy on a long-term basis; (c) provide for an annual remuneration for the contracting distribution company equal to 4% of the annual payments under the contract to compensate said company for accepting the financial obligation of the long term contract, such provision to be acted upon by the department of public utilities at the time of contract approval; and (d) require that the renewable energy generating source to be used by such developer pursuant to such proposal meet the following criteria: (i) have a commercial operation date, as verified by the department of clean energy, on or after January 1, 2008; (ii) be located within the jurisdictional boundaries of the commonwealth including state waters, or in adjacent federal waters; (iii) be qualified by the department of clean energy as eligible to participate in the Massachusetts RPS program, pursuant to section 11F of chapter 25A of the general laws, and to sell RECs pursuant to such program; (iv) be determined by the department to: (1) provide enhanced electricity reliability within the commonwealth; (2) contribute to moderating system peak load requirements; (3) be cost effective to Massachusetts electric rate payers over the term of the contract; and (4) where feasible, create additional employment in the Commonwealth.

The distribution company shall not be obligated to enter into long-term contracts pursuant to this section that would, in the aggregate, exceed 3 per cent of the total energy demand from all distribution customers of the distribution company in its service territory. As long as the electric distribution company has entered into long term contracts in compliance with this section, the electric distribution company shall not be required by regulation or order to enter into contracts with terms of more than three years in meeting its applicable annual renewable portfolio standard requirements set forth in section 11F of chapter 25A of the General Laws, unless the department finds that such contracts are in the best interest of customers, and

provided further that the electric distribution company may execute such contracts voluntarily, subject to department of public utilities approval.

An electric distribution company may elect to use any energy purchased under such contracts for resale to its customers, and may elect to retain RECs for purpose of meeting its applicable annual renewable portfolio standard requirements set forth in section 11F of chapter 25A of the General Laws. If the energy and RECs are not so used, such companies shall sell such purchased energy into the wholesale spot market, and shall sell such purchased RECs through a competitive bid process. Notwithstanding the foregoing, the department shall conduct periodic reviews to determine the impact on the energy and REC markets of the disposition of energy and RECs hereunder, and may issue reports making recommendations for legislative changes if it determines that actions are being taken that will adversely affect the energy and REC markets.

In the event the distribution company sells the purchased energy into the wholesale spot market and auctions the RECs as described in sixth paragraph, the distribution company shall net the cost of payments made to projects under the long-term contracts against the proceeds obtained from the sale of energy and RECs, and the difference shall be credited or charged to all distribution customers through a uniform fully reconciling annual factor in distribution rates, subject to review and approval of the department of public utilities. The reconciliation process shall be designed so that the distribution company recovers all costs incurred under such contracts.

In the event the RPS requirements of section 11F of chapter 25 should ever terminate, the obligation to continue periodic solicitations to enter into long-term contracts shall cease, provided that any contracts already executed and approved by the department of public utilities shall remain in full force and effect.

On or before July 1, 2010 and annually until 2012 when the long term contracting requirement expires pursuant to paragraph 1, the department of clean energy shall assess whether the long-term contracting requirements set forth in this section reasonably support the renewable energy goals of the commonwealth as set forth in section 11F of chapter 25A of the General Laws, and whether the alternative compliance rate established pursuant to said section 11F should be adjusted accordingly.

The provisions of this section shall not limit consideration of other contracts for RECs or power submitted by a distribution company for review and approval by the department of public utilities.

If any provision of this section is subject to a judicial challenge, the department of public utilities may suspend the applicability of the challenged provision during the pendency of the judicial action, until final resolution of the challenge and any appeals, and shall issue such orders and take such other actions as are necessary to ensure that the provisions that are not challenged are implemented expeditiously to achieve the public purposes of this provision.

SECTION 63. (a) Notwithstanding any general or special law to the contrary, each electric and gas company in the commonwealth shall provide to the secretary of the executive office of energy and environmental affairs, a progress report detailing the status of the arrearage management programs for eligible low-income customers, pursuant to chapter 164 of the General Laws. Each electric and gas company shall provide said progress report to the secretary no later than June 1, 2008. The secretary shall review and approve each progress report with such modifications as the secretary deems appropriate, no later than September 1, 2008. The secretary shall continue to conduct an annual review of such programs and may at any time order such

revisions or modifications as the secretary deems appropriate. For purposes of this section, an arrearage management program shall include a plan under which companies work with eligible low-income customers to establish affordable payment plans and provide credits to those customers toward the accumulated arrears where such customers comply with the terms of the program.

(b) The secretary shall require a company that initially offers a low income customer who has an arrearage, but whose utility service has not yet been terminated, a payment plan of not less than 4 months including the initial down payment of 25 per cent of the balance owed, and the remaining repayment balance amounts shall be divided equally; provided, however, that the secretary may authorize a repayment period of less than 4 months for good cause. A company making such a request shall notify the customer that the request has been made. This paragraph shall not limit the right of a customer to request a payment plan of more than 4 months or limit the authority of the secretary to order a payment plan of more than 4 months either on an individual basis or through revisions to its billing and termination regulations.

SECTION 64. The secretary of executive office of energy and environmental affairs shall, in conjunction with the department of public utilities implement a “energy pay and save”, hereinafter referred to as EPS pilot program, allowing electric utility customers to purchase and install renewable energy products in their residences or commercial facilities, by paying the cost of the system over time through an additional charge on the customer's electricity bill. The cost of the products purchased under the pilot program shall be added to the electric utility customer’s utility bills, as a monthly EPS tariff, and shall be paid until the cost of purchase and installation of the products is paid off. The payment structure shall be implemented so that the charge on the electric utility customer’s utility bill shall be less than the energy savings of that customer over the course of each given year. Non-payment by the owner of the EPS tariff shall result in disconnection, and a utility shall be entitled to recover the debt.

The pilot program shall be established with a minimum of 50 participants and a maximum of 200 participants. The maximum project size for the program shall be $1,000 for commercial utility customers and $500 for residential utility customers. Portable electrical cost measures shall not be funded. Quick pay options shall be investigated, allowing customers to have the option to pay off the entire balance of the amount financed on the first billing cycle. The program shall be funded from such sources as determined by the secretary and such funds shall be used to offset the cost of the program for the utilities, and as such payments for the purchases are paid to said utilities.

The pilot program shall be implemented on or before June 1, 2008 and shall expire on December 31, 2008. The secretary and the department shall issue a final report, which shall include the results of its review and analysis, to the joint committee on telecommunications, utilities and energy, and the house and senate committees on ways and means on or before June 1, 2009.

SECTION 65. On or before September 1, 2008, each electric distribution company shall file a proposed plan with the department of public utilities to establish a “smart grid” pilot program. Each such pilot program shall utilize advanced technology to operate an integrated grid network communication system in a limited geographic area. Each pilot program shall include, but not be limited to advanced (“smart”) meters that provide real time measurement and communication of energy consumption,

automated load management systems embedded within current demand-side management programs and remote status detection and operation of distribution system equipment. On or before September 1, 2008, each electric distribution company shall file a proposal with the department of public utilities to implement a pilot program that requires time of use or hourly pricing for commodity service for a minimum of 0.5 per cent of the company's customers. A specific objective of the pilot would be to reduce, for those customers who actively participate in the pilot, peak loads by a minimum of 5 per cent. The programs filed by the distribution company shall include proposals for rate treatment of incremental program costs. The department shall review and approve or modify such plans on or before January 1, 2009. Plans which provide for larger numbers of customers and can show higher bill savings than outlined above would be eligible to earn incentives as outlined in an approved plan. Following the completion of the pilot programs, the secretary of energy and environmental affairs shall submit a report to the joint committee on telecommunications, utilities and energy no later than February 1, 2011 detailing the operation and results of such programs, including information concerning changes in consumer's energy use patterns, an assessment of the value of the program to both participants and non-participants and recommendations concerning modification of the programs and further implementation.

SECTION 67. The secretary of the executive office of energy and environmental affairs shall make recommendations regarding what supplemental state funds, if any, shall be expended for the federal Low Income Home Energy Assistance Program, pursuant to 42 U.S.C. Section 8621 et seq., for the purpose of assisting low-income elders, working families and other households with the purchase of heating oil, propane, natural gas and electricity and other primary or secondary heating sources; provided, however, that any recommended expenditures in addition to any federal funding shall be made in accordance with the state plan submitted by the department of housing and community development in accordance with said federal program. The recommendations shall include recommended funding levels and funding sources. The secretary of the executive office of energy and environmental affairs shall submit the plan to the joint committee on telecommunications, utilities and energy on or before October 1, 2008.

SECTION 68. The department of public utilities shall direct all distribution companies, as defined in section 1F of chapter 164 of the General Laws, to submit a plan within 60 days of the effective date of this Act providing for retail access to competitive sellers of renewable energy generation attributes, whether or not bundled with electricity. The department shall approve or modify such plan after an opportunity for notice and comment by all interested persons; provided however, if a distribution company provides retail access to competitive sellers of renewable energy generation attributes prior to the effective date of this act, it shall not be required to file a plan pursuant to this section.

SECTION 69. There is hereby established a special commission to consist of 2 members of the senate to be appointed by the senate president, including the senate chairman for the joint committee on

telecommunications, utilities and energy who shall serve as co-chairman, and 1 member of the senate appointed by the minority leader of the senate, 2 members of the house of representatives appointed by the speaker, including the house chairman for the joint committee on telecommunications, utilities and energy who shall serve as co-chairman, and 1 member of the house appointed by the minority leader in the house, the commissioner of the department of clean energy or his designee, the secretary of energy and environmental affairs or his designee and 3 persons to be appointed by the governor, 1 of whom shall be a representative of the waste-to-energy industry, and 1 of whom shall be a representative of a consumer advocacy organization, for the purpose of making an investigation and study relative to the burning of commercial and demolition waste as it relates to the Massachusetts Renewable Energy Portfolio Standard Program, established by section 11F of chapter 25A of the General Laws. Said commission shall report the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect by filing the same with the clerks of the senate and the house of representatives on or before July 1, 2008.

SECTION 71. The department of clean energy shall, in consultation with the department of conservation and recreation, a representative from the Bureau of Forestry, and the department of environmental protection, commence a public rulemaking process no later than July 1, 2008, to

examine the use of non-sustainably harvested virgin wood as a biomass fuel for inclusion in Class I and II of the Massachusetts renewable portfolio standard pursuant to section 11F of chapter 25A of the General laws. Said process shall be complete on or before July 1, 2009.

SECTION 72. The department of public utilities shall establish a pilot program, hereinafter referred to as the HEAT Loan Program, to assist consumers with the purchase of energy efficient items for residential home modifications. For the purposes of this program, energy efficient items shall include home insulation, new window installation, advanced programmable thermostats, fuel efficient furnaces, boilers, oil, gas, propane, or electric heating systems, solar domestic or fuel efficient hot water systems, materials for insulation or sealing of a duct, attic, basement, rim joint or wall and pipe insulation for heating systems or other retail items for use in a residential dwelling that increase the energy efficiency of said dwelling.

In establishing the program, the department shall develop a list of qualified state or federally chartered banking institutions or credit unions that do business in the commonwealth and that are governed by chapter 167 or 171 of the General Laws as participatory lending institutions. For the purposes of this section, a qualified lending institution shall include a lending institution, as described herein that is certified by the executive office and which shall offer zero and low interest loans for the purpose of enhancing the energy efficiency of a residential dwelling. The program shall be funded from that portion of the mandatory charge that is authorized by this section and allocated to residential customers consistent with section 19 of chapter 25 of the General Laws; provided, however, that not less than $5,000,000 shall be made available to assist participating financial institutions in offering said loan products by or through interest rate write downs or other credit enhancement features; and provided, further, that loans offered pursuant to the program shall be offered to residential homeowners in the commonwealth solely for the purposes stated herein. The department shall make such loans available for purchases made on or after January 1, 2008, but not later than December 31, 2008. The department shall establish the rules and guidelines to carry out the purposes of this section, including, but not limited to, establishing applicant criteria, application forms and procedures, and energy efficiency product requirements and lending institution tracking and reporting requirements. The department shall submit a report detailing the rules and guidelines to the joint committee on telecommunications, utilities and energy no later than January 1, 2009. The department shall submit a report detailing the program results no later than February 1, 2009 to the joint committee on telecommunications, utilities and energy and the house and senate committees on ways and means.

SECTION 73. It is established that the commonwealth's clean energy goals are as follows:-

(i) meet at least 25 per cent of the commonwealth's electric load, including both capacity and energy, by the year 2020 with clean, demand side resources including: energy efficiency, load management, demand response, and generation that is located behind a customer's meter and is a combined heat and power system with an annual efficiency of 60 per cent or greater with the goal of 80 per cent annual efficiency for combined heat and power systems by 2020;

(ii) meet at least 20 per cent of the commonwealth's electric load by the year 2020 through new, renewable generation;

(iii) reduce the use of fossil fuel in buildings by 10 per cent from 2007 levels by the year 2020 through the increased efficiency of both equipment and the building envelope;

(iv) reduce greenhouse gas emissions by 20 per cent from 1990 levels by the year 2020; and

(v) develop a plan to reduce total energy consumption in the commonwealth by at least 10 per cent by 2017 through the development and implementation of the green communities program that utilizes renewable energy, demand reduction, conservation and energy efficiency. The secretary shall annually, no later than September 1st, establish an annual reduction target for the commonwealth for the following calendar year.

(b) The secretary of energy and environmental affairs shall prepare and submit to the energy advisory board for review and approval a 5-year plan for meeting the clean energy goals of the commonwealth. The plan shall include strategies to meet each of the clean energy goals and shall also address the following topics:

(1) reduction of energy use in state buildings;

(2) reduction of energy use in municipal buildings;

(3) equitable distribution of program benefits to all customers and particularly low income customers to address the affordability and adverse impacts on low-income households of energy costs and demand mitigation strategies, and mitigation of such adverse impacts, such as by compensating adjustments to the low-income rate discount;

(4) the use of investment tax credits and tax policy generally to encourage investment in energy efficiency and renewable technologies;

(5) increased generation and use of renewable energy;

(6) siting reform;

(7) the coordination and integration of programs within the commonwealth and with regional efforts carried out by other New England states;

(8) progress towards improving the efficiency of buildings and mechanical systems on an all-fuels basis including, electric, gas and oil; and

(9) the use of low-carbon biofuels evaluated on a lifecycle basis.

(c) The secretary shall appoint an advisory board to assist in the development and review of the plan. The board shall review the plan and solicit stakeholder input and review. The board shall submit its findings and recommendations to the secretary who shall address the board's findings and recommendations and submit the plan to the speaker of the house of representatives, the president of the senate, the joint committee on telecommunications, utilities and energy, and the members of the board.

(d) The 5-year plan shall designate the agency responsible for implementation of each strategy and shall include timelines, performance standards, specific regulatory or legislative changes, evaluation procedures and additional budget requirements. The secretary shall conduct an annual performance evaluation of each program and regulatory initiative and, no later than 3 months after the end of each fiscal year, shall submit the results of those evaluations to the clerk of the house of representatives, who shall forward the same to the joint committee on telecommunications, utilities and energy, and the members of the energy advisory board.

SECTION 74. On or before January 1, 2011, the department of public utilities, in consultation with the department of clean energy, shall file a report on the effectiveness of the programs administered pursuant to this section. Said report shall include a financial account of all funds incurred by and administered under this section, and any recommendations deemed appropriate by the department, including but not limited to the reduction or

elimination of any mandatory charges authorized under this section as they may relate to programs and plans pursuant to sections 21 and 22 of chapter 25 of the general laws; provided, however, that any recommendation for reduction or elimination should include a mechanism to ensure continued adequate funding for comprehensive low income demand-side management and education programs. Said report shall be filed with the house and senate clerks who shall forward the same to the house and senate committees on ways and means and the joint committee on telecommunications, utilities and energy.

SECTION 75. The department of public utilities shall hold a public hearing and issue a report, no later than July 1, 2008, relative to whether it is cost effective to require electric companies and municipal lighting plants to replace meters for measuring electricity to consumers. The report shall include an evaluation of the frequency of replacements, the standards and practices employed by distribution companies to determine when replacement is necessary and rate impacts and cost benefit analysis of installing advanced metering technology. The department shall report to the committees on ways and means and the joint committee on telecommunications, utilities and energy its recommendations and proposed legislation, if any.

SECTION 76. Notwithstanding any general or special law to the contrary, the department of public utilities shall open an investigation and study relative to off-the-record *ex-parte* communications in any contested on-the-record proceeding before the department. The department shall report to the general court the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect, by filing the same with the clerk of the house of representatives, the clerk of the senate, who shall forward the same to the chairmen of the joint committee on telecommunications, utilities and energy on or before than April 1, 2008."

SECTION 77. Notwithstanding any general or special law to the contrary, there shall be a special commission to review and evaluate the feasibility of establishing a home energy scoring program. The commission shall study and evaluate the value of home energy scoring, the cost of energy scoring tests, and the result of such scoring on the conservation of energy. The commission shall consist of: the house and senate chairs of the joint committee on telecommunications, utilities and energy or their designees, who shall co-chair the commission; the house minority leader, or his designee; the senate minority leader, or his designee; 1 member of the board of registration for home inspectors, one member of the state board of building regulations, a representative from the department of clean energy, the chairman of the joint committee on consumer protection and professional licensure or their designee; the chairman of the committee on

housing, or their designee, one representative from the Massachusetts Association of Realtors, one representative from the Greater Boston Real Estate Board, and one member of the home inspection industry. The commission shall have not less than 4 meetings and shall file a report of its findings, including any legislative or regulatory recommendations, with the clerks of the House of Representatives and the Senate on or before December 31, 2008.

SECTION 78. Notwithstanding any general or special law to the contrary, section 34 shall take effect on January 1, 2008.

SECTION 79. Notwithstanding any general or special law to the contrary, the department of clean energy shall establish a special commission to study the siting of clean and renewable energy generating facilities other than a waste to energy facility on property zoned for industrial use.

"SECTION 80. Green building tax credit.
Section 1. Declaration of policy and statement of purpose.
(a) It is the policy of Massachusetts to encourage the construction, rehabilitation and maintenance of buildings in this state in such a manner as to:—
(1) Promote better environmental standards for the construction, rehabilitation and maintenance of buildings in this state;
(2) improve energy efficiency and increase generation of energy through renewable and clean energy technologies;
(3) increase the demand for environmentally preferable building materials, finishes, and furnishings;
(4) Improve the environment by decreasing the discharge of pollutants from buildings; and
(5) Create industry and public awareness of new technologies that can improve the quality of life from building occupants.
(b) In order to facilitate the foregoing policies, the legislature hereby creates a business and personal income tax credit to promote the construction, rehabilitation and maintenance of buildings that meet the criteria set forth in this act.
Section 2. Section 6 of Chapter 62 of the General Laws, as amended by Sections 120 and 121 of Chapter 159 of the acts of 2000, is hereby further amended by inserting the following paragraph:—
(l) A tenant or owner of property located in the Commonwealth who is not a dependant of another taxpayer may take a tax credit against the income tax this chapter imposes in an amount equal to the sum of the credit components specified in 31N of Chapter 63 provided that:—

(1) for the credit allowance year, a taxpayer shall obtain and file an initial credit component certificate and an eligibility certificate the division of energy resources shall issue pursuant to Section 31O of Chapter 63;
(2) for each of the four years succeeding the credit allowance year, a taxpayer shall obtain and file an eligibility certificate pursuant to Section 31O of Chapter 63;
(3) the amount of each credit component does not exceed the limit set forth in the initial credit component certificate the corporation obtains pursuant to Section 31O of Chapter 63;
(4) a taxpayer may use a particular cost paid or incurred to determine the amount of only one credit component;
(5) where applicable, a taxpayer shall obtain a certificate of occupancy for the building for which the taxpayer intends to take the credit;
(6) in the case of a fuel cell or photovoltaic module, the property for which the taxpayer takes the credit remains in service;
(7) where the credit allowance year is the first taxable year in which a taxpayer may claim the credit pursuant to the initial credit component certificate, the green building remains in service during the year;
(8) a taxpayer shall not take a credit under this section unless the taxpayer complies with the requirements of Section 31O of Chapter 63, relating to reports to the division of energy resources;
(9) in the construction of a green building, a green base building, and a green tenant space, or the rehabilitation of a building, base building or tenant space to make a green building, green base building or green tenant space a taxpayer shall adhere to the regulations the commissioner promulgates and adopts under Section 31P of Chapter 63;
(10) a tenant or owner shall take a tax credit pursuant to the provisions of paragraphs (b), (c) and (d) of Section 31M of Chapter 63; and
(11) a taxpayer shall not take a credit under this section if the taxpayer is eligible for the credit under paragraph (a) of Section 31M of Chapter 63.
Section 3. Chapter 63 of the General Laws is hereby amended by inserting the following sections:—
Section 31L.
As used in this section and Sections 31M, 31N, 31O and 31P of this chapter and Section 6 paragraph (l) of Chapter 62, the following terms shall have the following meanings:—
(a) “Allowable costs” means amounts properly chargeable to a capital account, other than for land, which a tenant or owner pays or incurs for:—
(1) construction or rehabilitation;

(2) commissioning costs;
(3) interest paid or incurred during the construction or rehabilitation period;
(4) legal, architectural, engineering and other professional fees allocable to construction or rehabilitation;
(5) closing costs for construction, rehabilitation or mortgage loans;
(6) recording taxes and filing fees incurred in construction or rehabilitation;
(7) site costs, including but not limited to, temporary electric wiring, scaffolding, demolition costs, and fencing and security facilities; and
(8) furniture, carpeting, partitions, walls, wall coverings, ceilings, drapes, blinds, lighting, plumbing, electrical wiring and ventilation; but
(9) not including telephone systems, computers, fuel cells and photovoltaic modules.
(b) "Base building" means area of a building not intended for occupancy, including but not limited to:—
(1) structural components of the building;
(2) exterior walls;
(3) floors;
(4) windows;
(5) roofs;
(6) foundations;
(7) chimneys and stacks;
(8) parking areas;
(9) mechanical rooms, mechanical systems and owner controlled and operated service spaces;
(10) sidewalks;
(11) main lobby;
(12) shafts and vertical transportation mechanisms;
(13) stairways; and
(14) corridors.
(c) "Credit allowance year" means the later of:—
(1) the taxable year during which a tenant or owner place a green building, a green base building or green tenant space in service or receives a final certificate of occupancy; or
(2) the first taxable year for which a tenant or owner may claim a credit pursuant to the initial credit component certificate that the division of energy resources issues.
(d) "Commissioner" means the commissioner of the division of energy resources,
(e) "Commissioning" means the testing and fine-tuning of heat, ventilating, air conditioning and other systems to assure proper functioning and adherence to design criteria, the preparation of

system operation manuals, and the instruction of maintenance personnel.
(f) “Division” means the Massachusetts division of energy resources.
(g) “Economic development area” means an area as defined by Section 1 of Chapter 121C, or an empowerment zone or enterprise community as defined by Section 1391 of the Internal Revenue Code.
(h) “Eligible building” means a building located in the Commonwealth that:—
(1) contains at least 20,000 square feet of interior space;
(2) meets or exceeds or upon completion will meet or exceed all federal, state and local:—
(i) zoning requirements;
(ii) building codes;
(iii) environmental laws, regulations and industry guidelines;
(iv) land use and erosion control requirements; and
(v) storm water management;
(3) the Massachusetts state building code or a subsequent code classifies as commercial and has a ventilation system that:—
(i) can replace 100 percent of air on any floor on a minimum of two floors at a time; and
(ii) has fresh air intakes located a minimum of 25 feet away from loading areas, building exhaust fans, cooling towers, and other points of source contamination;
(4) is a residential multi-family building with at least 12 units;
(5) is a residential multi-family building with at least 2 units that are part of a single or phased construction project with at least 10,000 square feet under construction or rehabilitation in any single phase; or
(6) is a combination of buildings described in (3), (4) and (5); and
(7) is not a building located on freshwater wetlands or tidal wetlands as defined by Section 40 and 40A of Chapter 131, or on wetlands that require a permit for construction pursuant to Section 404 of the federal clean water act (33 U.S.C.A 1344).
(i) “Energy code” means a chapter within the Massachusetts state building code that addresses energy or energy related issues.
(j) “EPA” means the United States Environmental Protection Agency.
(k) “Fuel cell” means a device that produces electricity directly from hydrogen or hydrocarbon fuel through a non-combustive electrochemical process.
(l) “Green base building” means a base building that is part of an eligible building and meets the standards for energy efficiency, zoning, indoor air quality, and building material, finishes and

furnishing uses the commissioner establishes through regulations under this section.
(m) “Green building” means a building in which the base building is a green base building and the tenant space is green tenant space.
(n) “Green tenant space” means tenant space in an eligible building that meets the standards for energy efficiency, code requirements, indoor air quality, and building material, finishes and furnishing uses the commissioner establishes through regulations under this section.
(o) “Incremental cost of building-integrated photovoltaic modules” means:—
(1) the cost of a building-integrated photovoltaic module and associated inverter, additional wiring or other electrical equipment or mounting or structural materials, less the cost of spandrel glass or other building material the tenant or owner would have used in the event that the building-integrated photovoltaic module was not installed;
(2) labor costs properly allocable to on-site preparation, assembly and original installation of a photovoltaic module; and
(3) architectural and engineering services, designs and plans directly related to the construction or installation of the photovoltaic module.
(p) “LEED rating system” means the leadership in energy and environmental design green building rating system that the United States Green Building Council is developing.
(q) “Tenant improvements” means necessary and appropriate improvements needed to support or conduct the business of a tenant or occupying owner.
(r) “Tenant space” means the portion of a building designed or intended for the occupancy of the tenant or owner.
Section 31M.
(a) A corporation subject to tax under this chapter may take a credit against the excise this chapter imposes, in an amount equal to the sum of the credit components specified in Section 31N for the credit allowance year and each of the four succeeding years, provided that:—
(1) for the credit allowance year, a taxpayer shall obtain and file an initial credit component certificate and an eligibility certificate the division of energy resources shall issue pursuant to Section 31O;
(2) for each of the four years succeeding the credit allowance year, a taxpayer shall obtain and file an eligibility certificate pursuant to Section 31O;
(3) the amount of each credit component does not exceed the limit set forth in the initial credit component certificate the corporation obtains pursuant to Section 31O;

(4) a taxpayer may use a particular cost paid or incurred to determine the amount of only one credit component;
(5) where applicable, a taxpayer shall obtain a certificate of occupancy for the building for which the taxpayer intends to take the credit;
(6) in the case of a fuel cell or photovoltaic module, the property for which the taxpayer takes the credit remains in service;
(7) where the credit allowance year is the first taxable year in which a taxpayer may claim the credit pursuant to the initial credit component certificate, the green building remains in service during the year;
(8) a taxpayer shall not take a credit under this section unless the taxpayer complies with the requirements of Section 310, relating to reports to the division of energy resources; and
(9) in the construction of a green building, a green base building, and a green tenant space, or the rehabilitation of a building, base building or tenant space to make a green building, green base building or green tenant space a taxpayer shall adhere to the regulations the commissioner promulgates and adopts under Section 31P.
(b) A successor owner of property, for which the prior owner could have taken a tax credit pursuant to this section, may take a credit against the excise tax, provided that:—
(1) the subsequent owner may take a credit for the period allowable had the prior owner not sold the property; and
(2) for a taxable year, the prior and successor owners shall allocate the credit between themselves based on the number of days during the year that each party held property.
(c) A successor tenant, assuming tenancy in place of a prior tenant who could have taken a taken a tax credit pursuant to this section, may take a credit against the excise take, provided that:—
(1) the property upon which the successor tenant bases the credit remains in the building;
(2) the successor tenant may take a credit for the period allowable had the prior tenancy not been terminated; and
(3) for a taxable year, the prior and successor tenants shall allocate the credit between themselves based on the number of days during the year each party used the property.
(d) The commissioner may reveal to the successor owner or tenant information with respect to the credit of the prior owner or tenant that leads to the denial, in whole or part, of the credit the successor owner or tenant claims under paragraphs (b) or (c) of this section.
Section 31N.
(a) A tenant or owner of a green building may take a credit equal to the applicable percentage of the allowable costs the tenant or owner pays or incurs in constructing a green building or

rehabilitating a building to make it a green building, provided that:—
(1) the applicable percentage a tenant or owner shall use to calculate the credit is 1.4 percent, except where the building is located in an economic development area, in which case the applicable percentage a tenant or owner shall use is 1.6 percent;
(2) a tenant or owner shall not claim a credit on costs in excess of 150 dollars per square foot for the portion of the building that comprises the base building;
(3) a tenant or owner shall not claim a credit on cost in excess of 75 dollars per square foot for the portion of the building that comprises tenant space.
(b) A tenant or owner of green tenant space may take a credit equal to the applicable percentage of the allowable costs a tenant or owner pays or incurs in constructing green tenant space or rehabilitating tenant space to make it green tenant space, provided that:—
(1) a tenant or owner shall not claim a credit for green tenant space smaller than 10,000 feet unless the base building in which the tenant space is located is a green base building;
(2) the applicable percentage a tenant or owner shall use to calculate the credit is 1 percent, except where the building is located in an economic development area, in which case the applicable percentage a taxpayer shall use is 1.2 percent;
(3) a tenant or owner shall not claim a credit on cost in excess of 75 dollars per square foot; and
(4) where a tenant and an owner both incur costs for the creation of a green tenant space, and such costs exceed 75 dollars per square foot, the owner shall have priority in claiming the owner’s costs as the basis for the green tenant space credit component.
(c) A tenant or owner may take a credit equal to the applicable percentage of the allowable costs a tenant or owner pays or incurs in installing a fuel cell to serve a green building, green base building or green tenant space, provided that:—
(1) the fuel cell is a qualifying alternate energy source;
(2) the applicable percentage a tenant or owner shall use to calculate the credit is 6 percent of the sum of the capitalized costs a taxpayer pays or incurs for a fuel cell, including the cost of the foundation or platform and the labor cost associated with installation;
(3) the tenant or owner shall not claim a credit for capitalized costs in excess of 1,000 dollars per kilowatt of installed dc rated capacity; and
(4) the tenant or owner shall not include as part of the cost paid or incurred, a federal, state or local grant the tenant or owner receives for purchase and installation of a fuel cell, unless the tenant or

owner includes the amount of the grant as part of the tenant or owner's federal gross income.
(d) A tenant or owner may take a credit equal to the applicable percentage of the allowable costs a tenant or owner pays or incurs in installing a photovoltaic module to serve a green building, green base building or green tenant space, provided that:—
(1) the photovoltaic module constitutes a qualifying alternate energy source;
(2) the applicable percentage a taxpayer shall use to calculate the credit is 20 percent of the incremental cost a taxpayer pays or incurs for building integrated photovoltaic modules;
(3) the applicable percentage a tenant or owner shall use to calculate the credit is 5 percent of the costs of non-building-integrated photovoltaic modules;
(4) the tenant or owner shall not claim a credit for costs in excess of the product of (1) three dollars and (2) the number of watts included in the dc rated capacity of the photovoltaic module;
(5) the tenant or owner shall not include as part of the cost paid or incurred, a federal, state or local grant the tenant or owner receives for purchase and installation of a photovoltaic module, unless the tenant or owner includes the amount of the grant as part of the tenant or owner's federal gross income.
(e) A tenant or owner of a green base building may take a credit equal to the applicable percentage of the allowable costs the tenant or owner pays or incurs in constructing a green base building or rehabilitating a building to make it a green base building, provided that:—
(1) the applicable percentage a tenant or owner shall use to calculate the credit is 1 percent, except where the building is located in an economic development area, in which case the applicable percentage a tenant or owner shall use is 1.2 percent;
(2) a tenant or owner shall not claim a credit on costs in excess of 150 dollars per square foot for the portion of the building that comprises the base building.
Section 31O.
(a) Upon a tenant or owner's application and showing that the tenant or owner is likely to place in service, in a reasonable time, property that qualifies for the tax credit under this section, the division shall issue an initial credit component certificate identifying:—
(1) the first taxable year for which the tenant or owner may claim a credit;
(2) the expiration date of the certificate, which the division may extend to avoid hardship;
(3) the property to which the certificate applies; and

(4) the maximum amount of the credit component allowable for each of the five taxable years for which the certificate allows the credit.

(b) In a taxable year for which a tenant or owner claims a tax credit under this section, the tenant or owner shall obtain an eligibility certificate from an architect or professional engineer licensed to practice in the Commonwealth. The architect or engineer shall certify, under the seal of the architect or engineer, that, based upon the standards and guidelines in effect at the time in which the property was placed in service, the building, base building or tenant space for which the tenant or owner claims the credit is a green building, green base building or green tenant space, and that the fuel cell or photovoltaic module constitutes a qualifying energy source and remains in service. The architect or engineer shall set forth specific findings upon which the architect or engineer based certification and provide sufficient information to identify a building or space.

(c) Immediately following occupancy, and in a taxable year for which a tenant or owner claims a tax credit under this section, the tenant or owner shall hire to perform indoor air quality testing and record baseline readings, an engineer or industrial hygienist licensed or certified to practice in the Commonwealth or other professional the commissioner may approve. The engineer, industrial hygienist or other professional shall monitor supply and return air and ambient air for carbon monoxide, carbon dioxide, total volatile organic compounds, radon and particulate matter; provided that once radon measurements meet the standards the commissioner establishes, annual testing is not required.

(d) For each taxable year for which a tenant or owner claims a tax credit under this section, the tenant or owner shall maintain records for:—

(1) annual energy consumption for building, base building or tenant space;

(2) annual results of air monitoring for building, base building or tenant space;

(3) annual confirmation that the building, base building or tenant space continues to meet requirements regarding smoking area;

(4) written notifications from tenants regarding, and requests to remedy indoor air problems;

(5) monthly results of performance validation for photovoltaic modules and fuel cells; and

(6) certification as to off-gassing and other contamination, as prescribed in subsection paragraph 10 of this subsection.

(e) A tenant or owner claiming a tax credit under this section shall file the initial credit component certificate and the eligibility certificate with the department of revenue and shall file a duplicate

with the division. In addition, when claiming a credit under this section, the tenant or owner shall provide the information collected pursuant to paragraph 3 of this subsection to the division. The commissioner shall specify the time and form in which the tenant or owner must provide the collected information.

(f) If the division has reason to believe that an architect or engineer engaged in professional misconduct when making a certification under this section, the division shall inform the board of registration of architects or the board of registration of engineers and land surveyors.

(g) An owner of a green tenant space claiming the tax credit under this section shall:—

(1) prior to initial occupancy and upon a tenant's request, provide a tenant with:—

(i) written notification of the opportunity to apply for a tax credit pursuant to this section; and

(ii) written guidelines regarding opportunities to improve the energy efficiency and air quality of tenant space and reduce and recycle waste stream; and

(2) in an owner occupied building, make all tenant space green tenant space.

(h) A tenant or owner claiming the tax credit under this section shall provide separate waste disposal chutes or a carousel compactor system for recyclable materials or otherwise facilitate recycling by providing a readily accessible collection area with sufficient space to store recyclable materials between collection dates.

(i) If a tenant or owner claiming the tax credit under this section permits smoking, the tenant or owner shall provide separate air ventilation and circulation systems for smoking and non-smoking areas.

(j) Prior to occupancy or re-occupancy, a tenant or owner claiming the tax credit under this section shall purge the air for a period of one week on every floor. A tenant or owner may purge for less time if the tenant or owner obtains certification from an engineer, industrial hygienist or other professional verifying that offgassing and other contamination can be reduced to acceptable levels in less than one week.

Section 31P.

(a) The commissioner may promulgate and adopt regulations that:—

(1) encourage the development of green buildings, green base buildings and green tenant space;

(2) establish high, commercially reasonable standards for obtaining the tax credits under this section;

(3) establish a reasonable time or period of time for submission of an application;
(4) establish a method for allocating initial credit component certificates among eligible applicants; and
(5) apply only to a green building, green base building, or green tenant space as defined in this section.
(b) Within 6 months of the effective date of this section, the commissioner shall promulgate and adopt regulations that establish:—
(1) standards for energy, including:—
(i) standards for energy use for eligible buildings provided that;
(A) energy use for a newly constructed green building, green base building or green tenant space cannot exceed 65 percent of the use permitted under the energy code; and
(B) energy use for a building, base building or tenant space rehabilitated to make a green building, green base building or tenant space cannot exceed 75 percent of the use permitted under the energy code;
(ii) standards for appliances and heating, cooling and water heating equipment for which, as of the effective date of this section, the United States department of energy, the environmental protection agency or some other federal agency provides specifications; and
(iii) standards for the commissioning of the mechanical plant of a building. The commissioner shall use documents such as the American Society of Heating, Refrigerating and Air Conditioning Engineers G-1 and the United States General Services Administration “Model Commissioning Plan and Guide Specifications” as a guide for the regulation;
(2) standards for indoor air quality in base buildings, including:—
(i) ventilation and exchange of indoor and outdoor air;
(ii) indoor air quality management plans for the construction or rehabilitation process, including provisions to protect ventilation system components and pathways from contamination;
(iii) clean procedures for a project that fails to follow a proper air quality management plan; and
(iv) levels of carbon monoxide, carbon dioxide and total volatile organic compounds, radon and particulate matter for indoor air;
(3) the minimum percentage of recycled content and renewable source material and maximum levels of toxicity and volatile organic compounds in building materials, finishes and furnishings, including but not limited to concrete and concrete masonry units, wood and wood products, millwork substrates, insulation, ceramic, glass and cementitious tiles, ceiling tiles and panels, flooring and carpet, paints, coatings, sealants, adhesives, and furniture. The commissioner
shall use the LEED rating system as a guide for the regulations;

(4) standards for a building located in an area where water use is not metered that require:—
(i) a gray water system that recovers non-sewage waste water or uses roof or ground storm water collection systems, or recovers ground water from a sump pump;
(ii) a delimiter for cooling tower systems, to reduce drift and evaporation; and
(iii) exterior plants to be tolerant of climate, soils and natural water availability and restricts the use of municipal potable water for watering exterior plants;
(5) standards for a building located in an area that does not have sewers or that has designated storm sewers that require:—
(i) an oil grit separator or water quality pond for pretreatment of runoff from any surface parking area; or
(ii) at least 50 percent of non-landscape areas, including roadways, surface parking area, plazas and pathways, must utilize pervious paving materials; and
(6) a methodology by which a tenant or owner shall demonstrate compliance with the standards for energy efficiency, material use, water use, and storm water runoff included in this section and developed by the commissioner.
(c) The commissioner shall review and update regulations promulgated under this section every two years from the date on which the commissioner adopts the regulations.
(d) The commissioner shall design and conduct state-wide, educational seminars and programs to assist developers, tenants, and others who may participate in the green building tax credit program. The commissioner shall also design written guidelines that owners of green tenant space can provide their tenants that explain opportunities to improve energy efficiency and air quality of tenant space and reduce and recycle waste stream.
(e) On or before April 1, 2008 the commissioner shall submit a written report to the governor, the president of the senate, the speaker of the house, the chairman of the senate finance committee and the chairman of the house ways and means committee, identifying:—
(1) the number of certifications filed with the division;
(2) the number of taxpayers claiming the credit under this section;
(3) the amount of the credits taxpayers have claimed; and
(4) other information the commissioner believes meaningful and appropriate in evaluating the tax credit under this section.
(f) Funding
(1) Sufficient funds shall be appropriated to the division to fill 3 full-time staff positions at the division for the administration of this section.

(2) Additional funding of 150,000 dollars shall be appropriated to the division for state-wide, educational seminars and programs to assist developers, tenants, and others who may participate in the green building tax credit program.

(3) Upon application by a taxpayer, the Division shall issue an initial credit component certificate where the taxpayer has made a showing that the taxpayer is likely within a reasonable time to place in service property which would warrant the allowance of a credit under this section. Such certificate shall state the first taxable year for which the credit may be claimed and an expiration date, and shall apply only to property placed in service by such expiration date. Such expiration date may be extended at the discretion of the Division, in order to avoid unwarranted hardship. Such certificates may be issued in years 2006-2010. Such certificates shall state the maximum amount of credit component allowable for each of the five taxable years for which the credit component is allowed, under Section 31N.

(i) Period one. Initial credit component certificates for period one may be issued in years 2006-2010. Such certificates for period one shall not be issued, in the aggregate, for more than twenty-five million dollars worth of credit components. The total amount of credit component allowable for the five taxable years for which the credit components are allowed, as set forth on any one initial credit component certificate, shall be limited to two million dollars. However, a taxpayer that is the owner or tenant of more than one building that qualifies for the credits provided for under this section may be issued initial credit component certificates with respect to each such building with the aggregate amount of credit components permitted for each such certificate being two million dollars. In addition, such certificates for period one shall be limited in their applicability, as follows:—

Credit components in the aggregate shall not be allowed for more than:—	With respect to taxable years beginning in:—
$ 1 million	2007
$ 2 million	2008
$ 3 million	2009
$ 4 million	2010
$ 5 million	2011
$ 4 million	2012
$ 3 million	2013
$ 2 million	2014
$ 1 million	2015

Provided, however, that if as of the end of a calendar year, certificates for credit component amounts totaling less than the amount permitted with respect to taxable years commencing in

such calendar year have been issued, then the amount permitted with respect to taxable years commencing in the subsequent calendar year shall be augmented by the amount of such shortfall. (ii) Period two. Initial credit component certificates for period two may be issued in years 2011-2015. Such certificates for period two shall not be issued, in the aggregate, for more than twenty-five million dollars worth of credit components. The total amount of credit component allowable for the five taxable years for which the credit components are allowed, as set forth on any one initial credit component certificate, shall be limited to two million dollars. However, a taxpayer that is the owner or tenant of more than one building that qualifies for the credits provided for under this section may be issued initial credit component certificates with respect to each such building with the aggregate amount of credit components permitted for each such certificate being two million dollars. Provided further, a taxpayer that is the owner or tenant of a building for which an initial credit component certificate was issued for period one, shall not be issued an initial credit component certificate with respect to such building for period two. In addition, such certificates for period two shall be limited in their applicability, as follows:—

Credit components in the aggregate shall not be allowed for more than:—	With respect to taxable years beginning in:—
$ 1 million	2012
$ 2 million	2013
$ 3 million	2014
$ 4 million	2015
$ 5 million	2016
$ 4 million	2017
$ 3 million	2018
$ 2 million	2019
$ 1 million	2020

Provided, however, that if as of the end of a calendar year, certificates for credit component amounts totaling less than the amount permitted with respect to taxable years commencing in such calendar year have been issued, then the amount permitted with respect to taxable years commencing in the subsequent calendar year shall be augmented by the amount of such shortfall. Provided, further, that if at the end of calendar year two thousand nine, certificates for credit component amounts issued by the Division have totaled less than twenty-five million dollars for calendar years 2011-2015, then the period to issue initial credit component certificates shall be extended to the end of calendar year two thousand sixteen and the Division shall be permitted to issue in two thousand sixteen initial credit component certificates

for amounts that equal the difference between the amounts issued for calendar years 2011-2015 and twenty-five million dollars.”.

Section 4. Notwithstanding any special or general law to the contrary, the provisions of this section shall not take effect until such time as the department of revenue has furnished a study of their impact on the state’s economy and the revenue cost to the commonwealth and its cities and towns, including, but not limited to, a distributional analysis showing the impact on taxpayers of varying income levels, the current practice of other states, any anticipated change in employment, and ancillary economic activity, to the joint committee on revenue and the house and senate committees on ways and means.

“SECTION 81. The department of clean energy shall conduct a study of the effect of establishing municipal electric utilities in Lexington, Newton, Plymouth, Cambridge and Worcester on the communities and on the remaining ratepayers of the investor-owned utility that currently owns the assets and distributes the power in said municipalities. In order to conduct the study, the department of clean energy shall convene a study commission made up of one representative from each of Lexington, Newton, Plymouth, Cambridge and Worcester chosen by the executive of each municipality, one representative from the department of public utilities, and one representative from the department of clean energy. The department of clean energy shall submit the study to the Joint Committee on Telecommunications, Utilities, and Energy, and the executive of each municipality within six months of the effective date of this statute.”.

SECTION 82. Sales on the incremental price difference between a hybrid or alternative fuel vehicle, as defined by section 1 of chapter 62 of the General Laws, and the same vehicle that uses traditional fuel shall be exempt from the tax imposed pursuant to chapter 64H of the General Laws for 1 year commencing on July 1, 2008. The commissioner of revenue, in consultation with the

secretary of transportation and public works and the secretary of energy and environmental affairs, shall determine the exemption available pursuant to this section based on the incremental price difference between a hybrid or alternative fuel vehicle and the same non-hybrid or traditional fuel vehicle available for purchase in the commonwealth; provided, however, that if the same non-hybrid or traditional fuel vehicle does not exist in order to determine said incremental price difference, a similar non-hybrid or traditional fuel vehicle shall be substituted.